Supreme Court, U.S.
FILED

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No. 09-1002

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID MICHAEL DAVIS,

Petitioner,

v.

THE STATE OF MINNESOTA

Respondent.

On Petition for Writ of Certiorari
To the Minnesota Supreme Court

PETITION FOR WRIT OF CERTIORARI

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ISSUES

Has the State of Minnesota infringed upon the right to tribal self-government of the Minnesota Chippewa Tribe?

Is the assertion of state civil regulatory authority in this matter preempted under Public Law 280 exceptions?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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JURISDICTION

Under Supreme Court Rule 13 a petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review. Notice of Entry of Order for State v Davis, 773 N.W.2d 66, 68 (2009) was November 16, 2009.

INTRODUCTION

The Minnesota Supreme Court's Davis Syllabus simply declared that

> State court has subject-matter jurisdiction over appellant's traffic violations because Congress has not preempted Minnesota from enforcing its traffic laws against appellant in state court.

While that statement is true for non-Indians in Minnesota, the United States Constitution and United States Supreme Court federal Indian case law have preempted states from infringing on tribal jurisdiction, self governance, self-determination, states deciding tribal membership, and certainly on-reservation, tribal sovereign interests, all of which are part of the inherent rights of tribes.[1]

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[1] See *Opinion of the Solicitor of the Department of the Interior on the Powers of Indian Tribes* 55 I.D. 14 Oct. 25, 1934 submitted as part of the Senate record for the adoption of the Indian Reorganization Act declaring that "under section 16 of the Wheeler-Howard Act (48 Stat. 984, 987) the 'powers vested in any Indian tribe or tribal council by existing law' are those powers of local self-government which have never been terminated by law or waived by treaty." See also Summary 8. "To administer justice with respect to all disputes and offenses of or among the members of the tribe, other than the ten major crimes reserved to the Federal courts. The

Appellant Davis is an enrolled member of the Minnesota Chippewa Tribe[2] (MCT), cited for no proof of insurance while driving within the boundaries of one of the several MCT Reservations in Minnesota known as the Mille Lacs Reservation. Minnesota Courts now would not recognize their lack of subject matter jurisdiction, nor transfer the matter to the Mille Lacs Reservation's tribal court, for traffic conduct that the Minnesota Supreme Court previously recognized in 1997 as civil regulatory over tribal members on-reservation in State v Stone.[3]

Minnesota Chippewa Tribe adopted its original Constitution." See also Indian Civil Rights Act of 1968 ICRA) as amended.

[2] See Revised Const. of Minnesota Chippewa Tribe, Minnesota, Art. 1, Sec. 1. The Minnesota Chippewa Tribe is hereby organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended. PREAMBLE-- We, the Minnesota Chippewa Tribe, consisting of the Chippewa Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians, in order to form a representative Chippewa tribal organization, maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare for ourselves and descendants, do establish and adopt this constitution for the Chippewa Indians of Minnesota in accordance with such privilege granted the Indians by the United States under existing law. (Appx Ex).

[3] State v. Stone, 572 N.W.2d 725 (Minn. Dec 11,

Minnesota Courts appear to have adopted an apartheid-type jurisdictional approach to state law enforcement focused on MCT members--who in this case are cited for on-reservation, civil regulatory traffic matters on any of their several MCT reservations throughout northern Minnesota---except when the MCT member is on the one reservation that the individual member's enrollment is associated.[4] This jurisdictional, preemption/infringement problem has been happening for nearly a decade when the Minnesota Supreme Court decided in State v R.M.H. in 2000, a decade after Duro v Reina and the Congressional *Duro fix*.

Minnesota "state courts looking for any excuse to expand state taxing [fining] power are willing to rely on dicta from a case that Congress has

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1997). (In this case, for the first time the Minnesota Supreme Court developed its version of the Cabazon test to determine whether a law is civil-regulatory or criminal-prohibitive for purposes of state jurisdiction for on reservation traffic violations like no driver's license, no proof of insurance, no child restraints on the White Earth (MCT) Reservation involving a MCT member enrolled at White Earth).

[4] See State v Davis, 773 N.W.2d 66, 68 (2009), "The Minnesota Chippewa Tribe is a federally recognized Indian tribe with six member bands, including the Leech Lake Band and the Mille Lacs Band. Davis is an American Indian registered with the Leech Lake Band. (Appx Ex).

legislatively invalidated"[5] with the Duro fix in 1990. Twenty years after the Duro Fix, Minnesota's Indian Country needs a 2010 "Davis fix" from this Court to re-affirm the rights of tribal governments' civil regulatory authority over all on-reservation Indians[6], especially when in this case Davis is an enrolled member of *the Tribe*, on one of the several MCT's reservations.

Meanwhile, Minnesota Courts are continuously infringing on the rights of Tribes to make their own laws and be ruled by them, to determine their membership[7] and to exercise their

[5] See Scott A. Taylor, *The Unending Onslaught on Tribal Sovereignty: State Income Taxation of Non-Member Indians*, 91 Marquette L. Rev. 917, 971 (2008).

[6] See ICRA, 25 U.S.C. §1301(4) "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

[7] Williams v. Lee, 358 U.S. 217, 220 (1959), See also McClanahan v. Arizona Tax Comm'n, 411 U.S. 164, 172 (1973). (Questions of whether federal Indian legislation preempts state law are a separate and distinct inquiry to which the right of tribal self-government provides a "backdrop against which the applicable treaties and statutes must be read). *See also* White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 144 (1980) ("When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory

own subject matter jurisdiction based on inherent tribal sovereignty, especially for civil regulatory matters[8]. Minnesota courts appear to not understand[9] *why* Congress' "Duro fix" was applied to criminal matters *expressly* in Indian Country. The State v Hart Court remarked that the Lara Court

> did not address Indian tribes' inherent sovereignty over prosecutions for civil/regulatory offenses. More importantly, the Court did not address states' authority to prosecute nonmember Indians under criminal or civil law or whether states may have concurrent jurisdiction over nonmember Indians. As the Court stated, "the change at issue here is a limited one.... [T]his case involves no interference with the power or authority of any State.

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interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest").

[8] *See* California v. Cabazon Band of Mission Indians, 480 U.S. 202, 215, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987). (Applied pre-emption balancing test for federal interests, tribal interests and state interests under Public Law 83-280.

[9] See State v. Hart, 2006 WL 1229587 (Minn.App. May 09, 2006), review denied (Jul 19, 2006)(R'hrg Denied). See U.S. v Lara, 541 U.S. 193, 124 S.Ct. 1628, (2004).

Certainly, the Lara Court did not mean that if states were already misinterpreting or skipping over federal statutes preempting state jurisdiction in Indian country with regard to nonmember Indians on a reservation, for the State to continue infringing on tribal sovereignty without interference.

Minnesota Courts routinely conduct only a partial preemption analysis for civil regulatory jurisdiction under Public Law 280 always heralding section (a), and almost always skipping over important, preempting *exceptions* contained in subsections

> (b) "Nothing in this section shall . . . deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.[10]

And/or in subsection

> (c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, *be given full force and effect in the*

[10] Public Law 83-280; 18 U.S.C. § 1162(b), 28 U.S.C. § 1360(b).

determination of civil causes of action pursuant to this section.[11]

Shortly after State v Stone in 1997, all six constituent Band Reservation governments of the MCT had adopted tribal ordinances to establish tribal courts, comprehensive traffic laws and tribal police departments, which overall operate fairly consistent with Minnesota's traffic laws under cooperative law enforcement agreements[12] with adjacent local counties. The Mille Lacs Band tribal codes provide for jurisdiction over traffic matters involving members of the MCT.[13]

Minn. Stat. 626.90 provides for a cooperative law enforcement agreement between the Mille Lacs County and the Mille Lacs Band[14] and provides for

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[11] 28 U.S.C. § 1360(c). (Emphasis added).

[12] *Agreement Relating to the Use of Law Enforcement Facilities and Personnel in Cooperation Between Mille Lacs Band Law Enforcement Agency and the County of Mille Lacs*, Jurisdiction and Defense Not Waived—"Nothing in this agreement shall be construed to affect or waive the jurisdiction of the State of Minnesota, the United States, or the Mille Lacs Band of Chippewa Indians which each has under present laws or may have under future laws."

[13] The Mille Lacs Bands Codes provide for Judicial Authority and Jurisdiction since 1996 in Title 5 MLBSA Ch 2 § 112. "The Court of Central Jurisdiction shall have criminal jurisdiction over Mille Lacs Band members and non-member Indians alike and as may otherwise be prescribed by law."

[14] Minn. Stat. 626.90.

Mille Lacs Band jurisdiction over MCT members.[15] The area where Davis was observed by the officer and subsequently pulled over are all within the boundaries of the Mille Lacs reservation described in the 1855 Treaty.[16] [17]

In Davis the Minnesota Supreme Court *reasoned* the Mille Lacs Band government has superior inherent powers over the MCT, but never inquired or considered Davis' right to travel in the 1855 as a descendent of an 1855 signatory band (Pillager) enrolled at Leech Lake in the northern part of the 1855 ceded territory, much less fully consider the Mille Lacs Band's codes.[18] Therefore,

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[15] Id., Subd. 2(c)(a)(2). (the 1991 state law specifically cites to the 1855 Treaty and provided that (c) The band shall have concurrent jurisdictional [if three criteria are met] **over all Minnesota Chippewa tribal members within the boundaries of the Treaty of February 22, 1855, 10 Stat. 1165, in Mille Lacs County, Minnesota**; and (3) concurrent jurisdiction over any person who commits or attempts to commit a crime in the presence of an appointed band peace officer within the boundaries of the Treaty of February 22, 1855, 10 Stat. 1165, in Mille Lacs County, Minnesota. (Emphasis added).

[16] Treaty of February 22, 1855, 10 Stat. 1165. (Appx Ex).

[17] *See* Map of Indian Land Cessions and Reservations to 1858 (Appx Ex).

[18] In Davis the Court decided because "the MCT constitution does not possess any apparatus for law enforcement or judicial decision-making" and did not

Davis was never outside of his, *treaty reserved Indian Country* and section (c) of Public Law 280 must be recognized as a permanent, *civil* retrocession of state jurisdiction and exclusive repatriation of the reservation tribal government's authority over traffic matters for Indians' on reservation.

MCT members' reserved rights to hunt, fish and gather[19] are really the rights to obtain food, clothing and shelter in Indian Country, which must

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have a comprehensive traffic ordinance---*tribal* interests were *deemed* minimal compared to the Mille Lacs Band interests. Then the Davis Court decided Davis was a non-member of Mille Lacs and did not give any favorable consideration about the MCT enrollment, and *hocus pocus* -- magically the state had a greater self-interest . However, much like the *Duro fix* was adopted to close the federal jurisdictional gap--the Mille Lacs Bands Statutes were not fully considered. *See* Judicial Authority and Jurisdiction 2 MLBSA § 112, (1996) preceding State v Stone (1997), State v R.M.H.,(2000)(Pet for Re'Hrg Denied) State v. Losh, 755 N.W.2d 736 (2008) (Cert Denied) and State v Davis (2009). Minnesota courts are applying *their* "reservation member" analysis instead of "on-reservation Indian" and as such are following Duro v. Reina to exercise State civil regulatory authority over whomever the Minnesota courts determine are nonmembers.

[19] *See* Treaty with the Chippewa, 1855, Feb. 22, 1855, 10 Stat., 1165, Ratified Mar. 3, 1855, Proclaimed Apr. 7, 1855. (Appx Ex).

necessarily require a right to travel[20] throughout Indian Country, for which the modern canoe is the automobile used to achieve a modest living[21]. Here

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[20] U.S. v Gotchnik, 57 F. Supp. 2d 798 (1999) (treaty rights to travel examined in Minnesota's Boundary Waters Canoe Area. held that Treaty of 1854, giving Native American band right of access to traditional fishing grounds did not give band right of unrestricted travel to and from protected fishing grounds, and regulations prohibiting use of snowmobiles and boat motors in federal wilderness area did not conflict with treaty rights. 36 C.F.R. § 261(a). Aside from federal restrictions on travel, tribal traffic codes must apply to all Indians on reservation conduct exclusively under 28 U.S.C. 1360(c) as any tribal traffic and tribal court ordinances shall "*be given full force and effect in the determination of civil causes of action pursuant to this section*" in Indian Country. See also U.S. v. Smiskin, 487 F.3d 1260, 07 Cal. Daily Op. Serv. 5485, 2007.

[21] *See* U.S. v Bressette and Nahgahnub, 761 F. Supp. 658 (1991) which followed the Voigt cases which involved the treaties of 1837, 1842 and 1854. Bressette was a member of the Red Cliff Band (in Wisc.) and Nahgahnub is a member of the MCT's Fond du Lac Band (in Minn), and they were charged with a criminal gathering offense for migratory bird feathers from the ceded territories, with sales in Duluth, Minnesota. The 1824, 1837, 1842, and 1854 treaties reserved full usufructruary rights for the Chippewa in the ceded territories, including commercial activity. *See* LCO v. Wisc., 653 F.Supp.

appellant Davis, an enrolled MCT member was stopped on one of his MCT reservations, en route to his modern occupational method of gathering to earning a modest living by working as a security guard at the reservation casino.[22]

It seems the Minnesota Supreme Court is gambling that open violation of federal due process rights of Indian tribes will not receive review and scrutiny by this Supreme Court because their decision accepts that Appellant

> Davis argues, and we assume for purposes of this appeal, that the area where he stopped his vehicle is land held in trust by the United States for the Mille Lacs Band of Chippewa Indians[23] [, and] The Minnesota Chippewa Tribe (MCT) is a federally recognized Indian tribe with six member bands, including the Leech Lake Band and the Mille Lacs Band. Davis is an American Indian registered with the Leech Lake Band. He is not a member

1420 (W.D.Wis. 1987). "the rights to all the forms of animal life, fish, vegetation...and the use of all methods of harvesting employed in treaty times and those developed since...(t]he fruits....may be traded and sold to non-Indians, employing modern methods of distribution and sale...to enjoy a modest living..." *See also* Mille Lacs v Minnesota generally.

[22] California v. Cabazon Band of Mission Indians, 480 U.S. 202, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987).

[23] Davis 773 N.W.2d at 67.

> of the Mille Lacs Band and does not reside on the Mille Lacs Reservation. At the district court, Davis argued that the court lacked subject-matter jurisdiction because he was an Indian who committed an offense in Indian Country--the Mille Lacs Reservation--and that therefore only the tribal court had jurisdiction.[21]

After accepting appellant Davis is an enrolled member of MCT, in MCT on-reservation Indian Country, the Minnesota Supreme Court still upheld their own state jurisdiction for this civil regulatory matter. Even under the most obvious Indian and Indian Country factors, Minnesota courts choose to exercise jurisdiction in a manner most favorable to the state by deciding outcomes and penalties based on state courts determining who is the wrong type of MCT Indian on the wrong reservation and then prosecute, convict and extract fines and impose consequences. These matters all should properly be decided in tribal courts. It is readily apparent that Minnesota Courts need remedial guidance from this Court in the form of a contemporary 2010 *Davis fix*.

Members, nonmember Indians, non-Indians and "Duro fix"

In 1987 the Cabazon Court provided a balancing test of tribal, federal and state interests to determine whether States may exercise their

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[21] Id. at 68.

jurisdiction to control on-reservation, civil regulatory matters.[25] It took another decade before the Minnesota Supreme Court determined it lacked subject matter jurisdiction over tribal members' civil/regulatory traffic conduct on the White Earth Reservation of the MCT. However, three years later in State v R.M.H. the Minnesota Supreme Court held "that with respect to the interests of the tribe, nonmember Indians "are, for practical purposes, the same as non-Indians."[26] This practice by Minnesota Courts violates the federal due process rights of tribes. Inherent, tribal sovereignty is being greatly infringed upon which is really the reason why Congress had to pass the "Duro fix"[27] to expressly repatriate nonmember criminal jurisdiction to the tribes. The "Duro" fix in one simple sentence declared

> An Act to make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians.

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[25] See California v. Cabazon Band of Mission Indians generally.

[26] Davis citing State v. R.M.H.,617 N.W.2d 55, 63 (Minn. 2000).

[27] Act of Nov. 5, 1990, Pub. L. No. 101-511, § 8077(b), 104 Stat. 1892 (25 U.S.C. 1301(2)).

The Fix was in prompt response to the 1990 Duro v Reina[28], Congress enacted legislation that reinstated inherent tribal jurisdiction over non member Indians, thereby closing the jurisdictional gap that the Duro Court had created. The legislation amended Indian Civil Rights Act's (ICRA)[29] definition of a Tribe's "powers of self-government" to include "the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians."[30] ICRA defines "Indian" to mean any per son who would be subject to federal criminal jurisdiction as an "Indian" under 18 U.S.C. 1153.[31]

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[28] Duro v. Reina, 495 U.S. 676, 110 S.Ct. 2053, 109 L.Ed.2d 693 (1990). See also United States v. Lara, 541 U.S. 193, 200 (2004), the Court held that Congress "does possess the constitutional power to lift the restrictions on the tribes' criminal jurisdiction over nonmember Indians."

[29] See Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-03)

[30] 25 U.S.C. 1301(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

[31] See 91 Marq. L. Rev. 917, 969 citing 25 U.S.C. 1301(4). The initial legislation was effective until September 1991. § 8077(d), 104 Stat. 1893. After the

Congress decided that permanent legislation was appropriate because

> nonmember Indians "own homes and property on reservations, are part of the labor force on the reservation, * * * frequently are married to tribal members," receive many tribal ser vices, and have other close ties to Tribes.[32] Congress also relied on the fact that "[u]ntil the Supreme Court ruled in the case of Duro, tribal governments had been exercising criminal jurisdiction over all Indian people within their reservation boundaries for well over two hundred years."[33]

The same is true for inherent *civil authority* necessarily consistent with self government on reservations because

> It was common knowledge, at least to those federal officials administering federal Indian policy and to others in

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legislation was enacted, Congress conducted "extensive hearings." S. Rep. No. 153, 102d Cong., 1st Sess. 12-13 (1991). As a result of those hearings, Congress made the legislation permanent. Act of Oct. 28, 1991, Pub. L. No. 102-137, § 1, 105 Stat. 646.

[32] Id.

[33] Id. *citing* S. Rep. No. 168, 102d Cong., 1st Sess. 2 (1991).

proximity to Indian Country, that many reservations contained Native Americans from other tribes.[34] In addition, federal Indian policy often forced different tribes to consolidate on a single reservation.[35] Given this known and substantial intermixing, we find no efforts on the part of states to try to impose their taxes on Indians of one tribe living on the reservation of another tribe. Those efforts would not come until a hundred years later when the passage of time caused judges to forget that the phrase "Indians not taxed" had any continuing legal significance.[36]

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[34] Id. at 937. See, e.g., Treaty of May 7, 1868, art. II, 15 Stat. 649, 650 (setting the boundaries of the reservation of the Crow Tribe for the exclusive use of the Tribe plus "such other friendly tribes or individual Indians as from time to time they may be willing ... to admit amongst them ...").

[35] Id. See, e.g., Ntsayka Ikanum: Our Story, found at: http://www.grandronde.org/culture/# (accessed October 2, 2007) (telling the story of the consolidation of many tribes into the Confederated Tribes of Grand Ronde).

130 See Randall J. Gingiss, Forcing Fairness in State Taxation, 33 Ohio N.U.L. Rev. 41, 45 (2007) (noting that as late as 1890, the property tax provided 72% of all state tax revenue and 92% of all local tax revenues).

[36] Id. at 938.

Additionally the 1855 Chippewa Treaty in Minnesota contains federal anticipatory language of nonmember Indians on reservations by including in Article IX

> The said bands of Indians, jointly and severally, obligate and bind themselves not to commit any depredations or wrong upon other Indians, . . . to submit all difficulties between them and other Indians to the President, and to abide by his decision in regard to the same, and to respect and observe the laws of the United States, so far as the same are to them applicable.[37]

It was not until 1885 that federal legislation was enacted granting federal courts jurisdiction over certain major crimes committed by an Indian against another Indian. Prior to 1885, such offenses were tried in tribal courts.[38]

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[37] 1855 Treaty with the Chippewa, Art. IX.

[38] 91 Marq. L. Rev. 917, 938, See Ex parte Crow Dog, 109 U.S. 556 (1883)(federal court had no jurisdiction to try an Indian for the murder of another Indian). Section 1153 is predicated on the Act of March 3, 1885, § 8, 23 Stat. 385, and former sections 548 and 549, 18 U.S.C. (1940 ed.). The Major Crimes Act was passed in reaction to the holding of Crow Dog, see Keeble v. United States, 412 U.S. 205, 209-12 (1973), and United States v. Kagama, 118 U.S. 375, 383 (1886).

The Duro fix was necessary because the U.S. Supreme Court had found and made distinction between member Indians and nonmember Indians in Duro v Reina.[39] Ironically, ten years after Duro v Reina and the "Duro fix" by Congress, the Minnesota Supreme Court decides to follow Duro v Reina in State v R.M.H.[40] Minnesota Courts have forgotten how to understand their own lack of subject matter jurisdiction for civil regulatory traffic matters involving on-reservation Indians. Similarly, Minnesota Courts find they can ignore federal statutes, treaties and case law preempting jurisdiction and unilaterally decide that *certain* Indians are now "for [their] practical purposes, the same as non-Indians."[41] There is no showing by Minnesota Courts of where the longstanding, historically-recognized, inherent authority of tribes over any Indians on-reservation was taken from

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[39] Duro v Reina, 58 U.S.L.W. 4643, May 29, 1990.

[40] State v. R.M.H.,617 N.W.2d at 65-67 (In a 4-3 split court Dissenting Justices Stringer, Page and R. Anderson correctly analyzed federal Indian law preemption for nonmember Indians and pointed to the flaws in that "the theory of the state is simply that because R.M.H. is not a member of the White Earth Tribe he should be subject to jurisdiction of the state highway regulations . . ." "Pub.L. 280 unambiguously fails to distinguish between member and non-member Indians, state jurisdiction over R.M.H. is plainly lacking. The holding of the majority regarding the applicability of Pub.L. 280 thus ends the discussion of preemption." (Appx Ex).

[41] Davis citing RMH at 63.

Tribes or delegated by Congress. It is simply a judicially sanctioned scheme to impose burdens (taxes/fines) and control Indians on-reservation conduct which will continue to repeat itself[42] until this Court educates and directs the Minnesota Courts otherwise with the 2010 *Davis fix*.

Preemption, Infringement and Abstention

The Cabazon Court provided a preemption analysis to recognize all of the Congressional efforts, acts and intent as self described

> It is hereby declared to be the policy of Congress ... to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.[43]

In Indian Country, the canons of construction apply to treaties and also to federal statutes affecting Indian immunities and must be interpreted in the light most favorable to the non drafting parties, with

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[42] See Nason v 1991 Buick (Appx Ex) following Davis and R.M.H. wrong type of MCT member on wrong reservation Minnesota Supreme Court created Indian law. See also FN 83.

[43] Cabazon citing Mescalero citing 25 U.S.C. § 1451

any ambiguities resolved in favor of Indians. [44]

Tribal Interests Cabazon Analysis

It is important to recognize that not all laws with *state* criminal penalties and labels may actually be civil regulatory, therefore full consideration of federal and tribal interests before overriding state interests become necessary. The Cabazon case recognized California was imposing

> **a state burden on tribal Indians** in the context of their dealings with non-Indians since the question is whether the State may prevent the Tribes from making available high stakes bingo

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[44] See Bryan v Itasca, 426 U.S. 373, 96 S.Ct. 2102 (1976) noting the failure of congressional reports concerning statute which extended civil jurisdiction of states to Indian reservations to mention authority to tax was significant in the application of canons of construction applicable to statutes affecting Indian immunities as some mention would normally be expected if such a sweeping change in the status of tribal government and reservation Indians had been contemplated by Congress. 18 U.S.C.A. § 1162; 28 U.S.C.A. § 1360. See also Minnesota v. Mille Lacs Band of Chippewa Indians et al 526 U.S. 172 (1999) 124 F.3d 904, affirmed. See also Minnesota Revenue letter to MCT Pres. Deschampe, Aug. 13, 2002, post R.M.H. state taxation of MCT members not followed for on reservation MCT's on reservation earnings. (App Ex).

games to non-Indians coming from outside the reservations. Decision in this case turns on whether state authority is pre-empted by the operation of federal law; and "[s]tate jurisdiction is pre-empted ... if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *Mescalero*, 462 U.S., at 333, 334, 103 S.Ct., at 2385, 2386. **The inquiry is to proceed in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development.** Id., at 334-335, 103 S.Ct., at 2386-2387.**FN19** See also, *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143, 100 S.Ct. 2578, 2583, 65 L.Ed.2d 665 (1980).

FN19. In *New Mexico v. Mescalero Apache Tribe*, 462 U.S., at 335, n. 17, 103 S.Ct., at 2387, n. 17, **we discussed a number of the statutes Congress enacted to promote tribal self-**

government. The congressional declarations of policy in the Indian Financing Act of 1974, as amended, 25 U.S.C. § 1451et seq. (1982 ed. and Supp.III), and in the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450et seq. (1982 ed. and Supp.III), are **particularly significant in this case: "It is hereby declared to be the policy of Congress ... to help develop and utilize Indian resources, *both physical and human*, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities."** 25 U.S.C. § 1451. Similarly, "[t]he Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian

> people through the **establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.**" 25 U.S.C. § 450a(b).

These are important federal interests. They were reaffirmed by the President's 1983 Statement on Indian Policy. **FN20**

> **FN20.** "It is important to the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government." 19 Weekly Comp. of Pres.Doc. 99 (1983).

Cabazon at 216-218, and at 1092-93. (Emphasis added). The Cabazon Court went on to declare that

> These policies and actions, which demonstrate the Government's approval and active promotion of tribal bingo enterprises, are of particular

> relevance in this case. The Cabazon and Morongo Reservations contain no natural resources which can be exploited. The tribal games at present provide the sole source of revenues for the operation of the tribal governments and the provision of tribal services. They are also the major sources of employment on the reservations. Self-determination and economic development are not within reach if the Tribes cannot raise revenues and provide employment for their members. ***The Tribes' interests obviously parallel the federal interests.***

Id at 219. (Emphasis added). Here Davis was traveling in his new canoe to his contemporary employment at the reservation casino. This MCT reservation has tribal government, tribal courts, tribal codes and ordinances, tribal law enforcement and tribal courts. What are Minnesota courts' interests in nonmembers, and now wrong type of MCT member on reservation??

In *The Unending Onslaught on Tribal Sovereignty: State Income Taxation of Non-Member Indians* Prof. Taylor describes how

> Justice Thurgood Marshall, in McClanahan, reiterated the importance of federal preemption.[45] He looked at

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[45] 91 Marq. L. Rev. 917, 957, See McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 165

the treaties and relevant federal legislation.[46] He also recognized the importance of the Navajo Nation's sovereignty and included this as an important consideration, primarily because the Navajo Nation, like the Cherokee Nation, had a political identity that existed before the arrival of the Europeans and also had entered into treaties with the United States.[47] He noted, however, that 20th century Supreme Court cases had given states latitude over non-Indians within Indian Country.[48]

A careful reading of his opinion shows that Justice Thurgood Marshall's use of the phrase "reservation Indians" refers to Indians who were within Indian Country whether or not members of a particular tribe. This is demonstrated by his reference to federal criminal jurisdiction in which the federal

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(1973) ("We hold that by imposing the tax in question on this appellant, the State has interfered with matters which the relevant treaty and statutes leave to the exclusive province of the Federal Government and the Indians themselves. The tax is therefore unlawful as applied to reservation Indians with income derived wholly from reservation sources").

[46] Id. See id. at 173-74.

[47] Id. See id. at 168.

[48] Id. See id. at 172

> government, and not the state government, asserts criminal jurisdiction over crimes committed within Indian Country 1) by one Indian against another Indian or 2) by or against an Indian and involving a non-Indian. In these cases, the federal criminal jurisdiction arose so long as the person was an Indian. The specific tribal membership of the Indian was unimportant.[49] Under the relevant statutes, the federal policy of excluding state authority over Indians within

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[49] Id. See id. at 171 (Justice Marshall relies on Williams v. Lee, 358 U.S. 217, 219-220 (1959), which emphasizes that "if a crime was by or against an Indian, tribal jurisdiction or that expressly conferred by Congress has remained exclusive." The Court in Williams v. Lee relies on the decision of Donnelly v. United States, 228 U.S. 243, 252 (1912), which involved federal jurisdiction over a murder on the Hoopa Valley Reservation of a man who was a member of the Klamath Tribe. The federal statute in question merely referred to the murder of an Indian within Indian Country and not to his membership in the specific tribe. The facts in the Donnelly case indicate that the phrase "reservation Indian" means an Indian who is on a reservation whether or not he is a member. This distinction becomes important when we consider the effect of Duro v. Reina, 495 U.S. 676 (1990) and the federal legislation that superseded the holding in Duro. See discussion infra).

> Indian Country, irrespective of tribal membership, was quite clear.[50]
>
> Justice Marshall indicated that state concluded that the state power to tax did not extend to on-reservation activities of "reservation Indians," he clearly meant Indians who were members of the tribe and also those Indians who were members of other tribes. Federal law[51] and tribal law[52] often draw legitimate distinctions between Indians and non-Indians, especially in the hiring of employees. Most tribes find within their boundaries Indians who are members of other tribes. The historical record shows that intermarriage, trade, removal, the reservation system, and wars

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[50] Id. at 958. See, e.g., Donnelly v. United States, 228 U.S. 243, 252 (1912) (the term "Indian" in the Major Crimes Act included an Indian who was on the Hoopa Valley Reservation but was a member of the Klamath Tribe).

[51] Id. See, e.g., Morton v. Mancari, 417 U.S. 544 (1974) (upholding the validity of the Indian preference in hiring by the Bureau of Indian Affairs).

[52] Id. See Brendan O'Dell, *Judicial Rewriting of Indian Employment Preference*, 31 Am. Indian L. Rev. 187, 197-98 (2006/2007) (discussing Navajo law that required certain employers to follow a Navajo preference in hiring employees).

frequently caused the intermingling of Indians from different tribes.[53] In more recent times, intermingling comes about because tribes and the federal government hire professionals who are Native Americans from other tribes.[54] In addition, intermarriage among

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[53] Id. See, e.g., Renard Strickland, *Fire and the Spirits: Cherokee Law from Clan to Court* (Norman: University of Okla. Press 1975) (describing the effect of intermarriage and the role Cherokee members played in leadership roles of the Tribe); Carole Goldberg-Ambrose, *Of Native Americans and Tribal Members: The Influence of Law on Indian Group Life*, 28 Law & Society Rev. 1123, 1140 (1994) (describing the practice of some tribes taking prisoners of war from other tribes and then integrating them into their own communities); United States v. Rogers, 45 U.S. (4 How.) 567 (1846) (involving a white man who married a Cherokee woman and who the Cherokee Nation adopted into the Tribe), and Robert N. Clinton, Carole E. Goldberg, and Rebecca Tsosie, *American Indian Law: Native Nations and the Federal System*, 5th ed. (LexisNexis 2007) pp 136-37 (describing some examples of tribal separations, amalgamations, and consolidations).

[54] Id. See, e.g., New Mexico Taxation and Revenue Department v. Greaves, 864 P.2d 324, 325 (N.M. Ct. of App. 1993) (taxpayer was a member of the Rosebud Sioux Tribe in South Dakota but lived and worked, as a tribal judge, on the reservation of the Jicarilla Apache Tribe in New Mexico).

Native Americans contributes to intermingling.[55]

Justice Marshall indicated that state authority should not infringe tribal sovereignty.[56] But he did not indicate that such infringement was a categorical bar.[57] Instead, he stated that it should be the backdrop in which federal preemption is implied.[58] In looking at infringement, he emphasized that the right of native peoples to govern themselves was important.[59] Many non-member Indians play pivotal

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[55] Id. See, e.g., LaRock v. Wisconsin Department of Revenue, 621 N.W.2d 907, 908-9 (Wisc. 2001) (taxpayer was a member of the Menominee Tribe who married a member of the Oneida Tribe where she lived and worked).

[56] Id. at 959, See McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 172-73 (1973).

[57] Id. See id. at 172.

[58] Id. See id. ("The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read").

[59] Id. See id. ("It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government").

> governmental roles on reservations where they live and work. Although the facts in McClanahan involved a person who was a member of the Navajo tribe, it is clear that Justice Marshall was speaking broadly in a context in which the term "reservation Indian" included Indians who were members of other tribes.[60]

Taylor correctly argues that

> The McClanahan case is a good example of how the federal preemption law works. No specific treaty or law said that Arizona (or states generally) could impose their income taxes on reservation Indians.[61] Nonetheless, Justice Marshall read the totality of the treaties and federal legislation as having a general preemptive effect.[62] Given this approach, Arizona had to point to a specific piece of federal legislation authorizing its income taxation of reservation Indians.[63] It

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[60] Id.

[61] Id. at 962, See McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 167-71 (1973).

[62] Id. See id. at 173.

[63] Id. See id. at 178-79.

> could point to no such statute, and, accordingly, it lost its case in the Supreme Court.[64]

In Davis, the Minnesota Supreme Court relied on a very limited investigation of the tribal interests involved, which analysis failed to recognize the on-going, natural intermixings of tribal and nonmember Indians as an essential attribute of tribal sovereignty. Much less that the MCT is a federally-recognized Indian tribe with recognized treaty rights, formed under the Indian Reorganization Act of 1934 and the canons of construction and strong Congressional intent require ambiguities to be viewed in the light most favorable to tribes.

21st Century DAVIS Fix Preemption Test

While tribes want to rely on Cabazon, Bracker, McClanahan, Bryan v Itasca [County, Minn], Minnesota v Mille Lacs Band, and LCO it has been over twenty years since the Cabazon Court provided guidance and at least Minnesota courts need a more complete remedial, civil and regulatory preemption analysis and guidance from this Court.

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[64] Id.

Public Law 280

Preemption must necessarily begin with Public Law 280 in its entirety, which grants limited[65] criminal and civil jurisdiction over all Indians' conduct in *Indian Country*. Under the MCT Constitution all tribal members enjoy the "equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe"[66] which necessarily includes members' collective *inherent* civil rights, reserved treaty rights and civil regulatory control "to . . . maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare for ourselves and descendants,. . . "[67] throughout the MCT territories, which includes reservations, trust lands and treaty ceded territories.

Exceptions in Section (b)

In both the civil and criminal versions of Public Law 280(b) Congress provided that

> (b) "Nothing in this section shall . . . deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or

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[65] See Public Law 280, Sections (b & c). See e.g. Minnesota v Mille Lacs Band and LCO.

[66] MCT Const., Art. XIII, Rights of Members. (Appx Ex).

[67] Id. Preamble.

fishing or the control, licensing, or regulation thereof.[68]

The rights to hunt, fish and gather cannot be meaningfully realized without the necessary and inherent right to travel, whether on reservation or throughout the ceded territories.

Historically, the right to ravel is, and always has been, necessary to all humans to effectuate the usufructuary rights to hunt fish and gather, whether for the Chippewa in Minnesota or peoples on any other continent. The Chippewa made a variety of treaties in the early 1800's with the United States of America to acquire vast tracks of lands, which later became the states of Michigan, Wisconsin and Minnesota. The northern half of the State of Minnesota was created from lands ceded by various treaties with Chippewa Bands including, but not limited to, the 1824, 1837, 1854 and 1855 Treaties with the Chippewas, wherein the inherent rights to fish, hunt and gather were expressly retained in the ceded territories and lands for reservations established for permanent homes, all of which was described in the Mille Lacs decisions.[69]

Anishinabe usufructuary rights have been held to be held individually, by each tribal member, by the United States District Court for Minnesota in

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[68] Public Law 83-280 18 U.S.C. § 1162(b), 28 U.S.C. § 1360(b).

[69] See Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 119 S.Ct. 1187, 143 L.Ed.2d 270 (1999).

U.S. v Bressette,[70] which Court recited the scope, thoroughness and diversity of resources historically gathered and used for trade and personal use by tribal members.

In 1999, the Mille Lacs Supreme Court also determined that

> [t]he 1855 Treaty was designed primarily to transfer Chippewa land to the United States, not to terminate Chippewa usufructuary rights. It was negotiated under the authority of the Act of December 19, 1854. This Act authorized treaty negotiations with the Chippewa "for the extinguishment of their title to all the lands owned and claimed by them in the Territory of Minnesota and State of Wisconsin." Ch. 7, 10 Stat. 598. The Act is silent with respect to authorizing agreements to terminate Indian usufructuary privileges, and this silence was likely not accidental. During Senate debate on the Act, Senator Sebastian, the chairman of the Committee on Indian Affairs, stated that the treaties to be negotiated under the Act would "reserv[e] to them [i.e., the Chippewa] those rights which are secured by former treaties." Cong. Globe, 33d Cong., 1st Sess., 1404 (1854).[71]

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[70] *See* U.S. v Bressette, 761 F. Supp. 658 (1991) following LCO and Voigt. cases.

[71] See Minnesota v. Mille Lacs Band , generally.

These Chippewa treaties were not unconditional surrender treaties, or peace treaties, but treaties negotiated between two sovereigns retaining rights in ceded territories and trading for lands. "United States treaties may be made by the President, by and with the advice and consent of the Senate.[72] States may not enter into treaties[73], and once made, shall be binding on the states as the supreme law of the land."[74] The Chippewa would never have understood at the time of treaties that their right to travel was subject to the United States, and probably not even Congress because

> Although Indian treaties are treated like federal statutes and can be abrogated or modified by Congress, Congress must clearly express its intent to do so. See Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 690, 99 S.Ct. 3055, 61 L.Ed.2d 823 (1979). Thus, an act of Congress abrogates or modifies a specific treaty right only when there "is clear evidence that Congress actually considered the conflict between its intended action on the one hand and the Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty."

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[72] Art. II, Sec. 2, U.S. Const.
[73] Art. I, Sec. 10, cl. 1.
[74] Art. VI, cl. 2.

> United States v. Dion, 476 U.S. 734, 739-40, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986).[75]

Without an Act of Congress to modify the inherent treaty right to travel, the treaty right has not been abrogated and jurisdiction has been withheld from the states under Public Law 280 (b).

Exceptions in Section (c)

Similarly, 28 U.S.C. 1360(c) functions as a federal mechanism for the civil repatriation of tribal jurisdiction under Public Law 280, which provides that

> (c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, *be given full force and effect in the determination of civil causes of action pursuant to this section.*[76]

A decade ago all six Reservation Band governments of the MCT have enacted Tribal Courts, adopted traffic laws and ordinances and created tribal Police Departments for law enforcement, especially traffic. For Davis' conduct on the Mille Lacs Reservation

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[75] Gotchnik at 509. See also FN 20.

[76] 91 Marq. L. Rev. at 964, citing 28 U.S.C. § 1360(c). (Emphasis added).

"full force and effect in the determination of civil causes of causes of action" must mean Tribal Court for any Indians' on reservation traffic offense.

Tribal members and nonmember Indians

Most of the factual circumstances involving nonmember Indians being on reservation are usually for

> family and employment reasons. Often the non-member Indian is married to a member, works for the tribe, works for the Bureau of Indian Affairs, or runs a business providing goods and services. The tribal and federal interests are critical to the tribe, its population, its culture, and its governance.[77]

Minnesota courts have not given fair consideration as to how a nonmember Indian may come to be on a reservation. The R.M.H. Court [78] focused on membership noting that

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[77] Id.

[78] See R.M.H. at 55-57, (State's authority to exercise its jurisdiction over civil/regulatory traffic offenses committed on a state highway on an Indian reservation by an Indian who is not an enrolled member of the governing tribe arises from State's interest in regulating the safe flow of traffic on its state-operated and maintained highways and is not preempted by the federal interest in tribal self-government, self-sufficiency, and economic development). (Appx Ex).

> R.M.H. and the state . . . stipulated that R.M.H. was not an enrolled member of the White Earth Band, although his mother is a member of the band. Finally, they stipulated that R.M.H. is an enrolled member of the Forest County Potawatomi Community in Crandon, Wisconsin and that the offenses occurred within the boundaries of the White Earth Reservation.[79]

R.M.H.'s mother[80] was an enrolled member of the MCT, and they were both living the MCT White Earth Reservation. The R.M.H. Court ignored this Potawatomi boy's connection to the enrolled members of the Minnesota Chippewa Tribe and the White Earth Band and Reservation because by

> treating non-member Indians the same as non-Indians ignores their important place in the history of Indian Country and ignores their current roles as mothers and fathers, husbands and wives, members of extended families, federal employees, tribal employees, teachers, lawyers, doctors, accountants, and entrepreneurs. They were and are a critical part of the fabric that makes up the social, cultural, and political

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[79] Id.

[80] Id.. at 57.

> fabric of those communities that we call reservation Indians.[81]

Taylor reminds us about what the Davis Court did not learn in that

> the Duro dicta became meaningless when Congress stepped in and reaffirmed the historical reality that non-member Indians have always been an important and critical part of cultural, social, economic, and political life of most federally recognized Indian tribes.[82]

Instead the Minnesota courts create judicial loopholes federal statutes look for the words "nonmember Indians" *missing* from Public Law 280.[83] IN support of these concepts the state argued

> that neither Pub.L. 280 nor Stone applies here because R.M.H. is not an enrolled member of the White Earth Band. The district court agreed with

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[81] 91 Marq. L. Rev. at 976.

[82] Id. at 973.

[83] See R.M.H. at 57, "Public Law 280, 18 U.S.C. § 1162(a) (1998), does not expressly grant Minnesota jurisdiction to prosecute an Indian who drives without a license and speeds while on the reservation of an Indian tribe of which he is not a member because driving without a license and speeding are civil/regulatory offenses that do not fit within the ambit of Pub.L. 280."

> the state, concluding that R.M.H. was subject to state jurisdiction. The court then denied R.M.H.'s motion to dismiss, found him guilty of the cited offenses, and ordered him to pay fines and surcharges totaling $167.50.[84]

Minnesota's Indian case law mistakes serve only to compound the misunderstandings of how federal preemption should be considered in the next Indian Country case in Minnesota. Compounding the problem further, is that the lower courts are required by law to follow the Minnesota Supreme Court's decisions.[85]

Public Law 280 state courts, especially Minnesota's need to be reminded all Tribes, as a government, originally had the authority, like any government, to provide law and order for its members. Treaties have not diminished this power nor has Congress provided otherwise.[86] The time is

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[84] Id. at 57-58.

[85] *See* Morgan v 2000 Volkswagen, 754 N.W.2d 587 (Minn. App. 2008) held state civil forfeiture laws did not apply to tribal member on reservation (Appx Ex), *but compare* Nason v 1991 Buick, 2010 WL 431443 (Minn. App. Feb. 9, 2010) following Davis, MCT Fond du Lac member's vehicle subject to Minn. Civil forfeiture because incident on Mille Lacs Reservation and Nason is MCT, but Mille Lacs Band member. (Appx Ex).

[86] 91 Marq. L. Rev. at 969. See again *Opinion of the Solicitor of the Department of the Interior on the*

now for a 21st Century preemption test, the *Davis Fix*.

Minnesota's tribes, bands and members need this Supreme Court to grant certiorari to review the many wrongful applications of Minnesota law have actually been preempted by Congress, yet without understanding or reckless disregard, infringed upon federal rights, treaty rights and inherent rights meant to protect tribes/bands and their members from states.

There is no evidence to show that Congress has expressly granted any states under Public Law 280[87], any jurisdiction with regard to civil regulatory

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Powers of Indian Tribes 55 I.D. 14 Oct. 25, 1934 the 'powers vested in any Indian tribe or tribal council by existing law' are those powers of local self-government which have never been terminated by law or waived by treaty."

[87] Bryan v Itasca, 426 U.S. 373, 384-385, 96 S.Ct. 2102, 2109, 48 L.Ed.2d 710 (1976). In short the consistent and exclusive use of the terms "civil causes of action," "aris(ing) on," "civil laws . . . of general application to private persons or private property," and "adjudicat(ion)," in both the Act and its legislative history virtually compels our conclusion that the primary intent of s 4 was to grant jurisdiction over private civil litigation involving reservation Indians in state court. "A fair reading of these two clauses suggests that Congress never intended 'civil laws' to mean the entire array of state noncriminal laws, but rather that Congress intended 'civil laws' to mean those laws which have

traffic matters on reservation---much less tribal enrollment and domestic relations of Indians. Virtually all federal Indian case law recognizes the important differences between Indians and non-Indians. The term non-Indian and nonmember are sometimes used interchangeably in federal and U.S. Supreme Court decisions, but if these decisions are read carefully the federal courts distinguish non-Indians from nonmembers in the case.

The Davis Court knew or should have known that it was preempted and was impermissibly infringing on MCT tribal sovereignty. The Davis Court should have abstained from misusing federal Indian law cases which often refer to non-Indians as nonmembers---and substituting their unilateral, *state* reasoning of enrollment to deny an enrolled MCT member his rights, privileges and immunities under inherent rights of tribes' to self governance and self determination to make their own rules and be governed by them. Minnesota Courts' infringement is based on who they consider to be nonmember Indians simply to exert and seize

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to do with private rights and status. Therefore, 'civil laws . . . of general application to private persons or private property' would include the laws of contract, tort, marriage, divorce, insanity, descent, etc., but would not include laws declaring or implementing the states' sovereign powers, such as the power to tax, grant franchises, etc. These are not within the fair meaning of 'private' laws." "Moreover, this interpretation is consistent with the title of Pub.L. 280 . . . ."

jurisdiction, which violates treaties with the United States, federal statutes and Congressional intent.

CONCLUSION

Davis' citation should have been dismissed for lack of subject matter jurisdiction in state court. The Mille Lacs Band of Ojibwe has subject matter jurisdiction over Minnesota Chippewa Tribal members, nonmembers and has also adopted traffic laws. Here, Davis was exercising his usufructuary rights in a contemporary way by working a job to obtain a commodity (money wages) that can be exchanged for food, clothing and/or shelter in today's *Indian Country*. He was gathering and traveling in his new canoe, the automobile.

Davis was trying to achieve a comparable living, using his new canoe to travel to his place of employment at the reservation casino. Had any Minnesota Court asked they would have found out that Davis enjoys all Federally recognized Indian benefits including attending the Mille Lacs Reservation's BIA *Nayahshing* school, to Indian Health Service clinic services-Federal services, Indian preference in Indian Gaming jobs and other Reservation jobs. Davis attends pow-wows and traditional ceremonies and he attends the Tribal Executive Committee meetings of Minnesota Chippewa Tribe's which are rotated throughout the six MCT reservations. Davis' "Indian wife" is a daughter of a Mille Lacs band member and his paternal grandfather is recognized as a hereditary Big Drum Chief of the Mille Lacs, East Lake reservation.

It is readily apparent that this Court must grant certiorari review for State v. Davis as the infringement issues are well past ripe and repeating. It is very important to the Minnesota Chippewa Tribe and all Indian Country for this Supreme Court to give fair protection to tribal sovereignty in the form of a modern and comprehensive preemption test for all states, but especially Public Law 280 states like Minnesota. The *Davis Fix*!

Dated: Feb 15, 2010

s/ Frank Bibeau

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STATE OF MINNESOTA **JUDGMENT**

Supreme Court

State of Minnesota, respondent,
vs. David Michael Davis, Appellant

Appellate Court # A07-36

Trial court # CR-05-3441

Pursuant to a decision of Supreme court duly made and entered it is determined and adjudged that the decision of the Mille Lacs county District Court herein appealed from he and the same hereby is affirmed and judgment is entered accordingly. A certified copy of the entry of judgment and the court's decision is herewith transmitted and made part of the remittitur.

Dated and signed:
November 16, 2009

FOR THE COURT

Attest: Frederick K. Grittner
Clerk of the Appellate Courts

By: s/ Kim Ghilardi
Assistant Clerk

STATE OF MINNESOTA

SUPREME COURT

TRANSCRIPT OF JUDGMENT

I, Frederick K. Grittner, clerk of the Appellate courts, do hereby certify that the foregoing is a full and true copy of the Entry of f Judgment in the cause therein entitled, as appears from the original record in my office: that I have carefully compared the within copy with and original and that the same is a correct transcript therefrom.

Witness my signature
at the Minnesota Judicial Center,

In the City of St. Paul November 16, 2009

Dated

Frederick K. Grittner
Clerk of the Appellate Courts

By: s/ Kim Ghilardi
Assistant Clerk

STATE OF MINNESOTA

IN SUPREME COURT

A07-36

Court of Appeals

Gildea, J.
Dissenting, Page, J.

State of Minnesota,

Respondent,

vs.

Filed: September 10, 2009
Office of Appellate Courts

David Michael Davis,

Appellant.

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janice S. Kolb, Mille Lacs County Attorney, Tara Ferguson Lopez, Assistant Mille Lacs County Attorney, Milaca, Minnesota, for respondent.

Chris Allery, Anishinabe Legal Services, Cass Lake, Minnesota, for appellant.

S Y L L A B U S

State court has subject-matter jurisdiction over appellant's traffic violations because Congress has

not preempted Minnesota from enforcing its traffic laws against appellant in state court.

Affirmed.

OPINION

GILDEA, Justice.

The State charged appellant, David Michael Davis, with speeding and failing to provide proof that he had insurance on his vehicle. Davis moved to dismiss the charges, arguing that the district court lacked subject-matter jurisdiction. The court held that it had subject-matter jurisdiction, and the Minnesota Court of Appeals affirmed. Because we conclude that Congress has not preempted Minnesota from enforcing its traffic laws in state court under the circumstances presented here, we affirm.

On December 3, 2005, Davis was driving on State Highway 169 in Mille Lacs County, Minnesota. Joshua Kimball, an officer with the Mille Lacs Tribal Police, was on patrol in the area and observed Davis traveling at a high rate of speed. Kimball used the radar equipment in his squad car to confirm that Davis was exceeding the speed limit by approximately 15 miles per hour. Kimball activated his emergency light, but Davis continued driving. Eventually, Davis stopped his vehicle on Ataage Drive in North Kathio, Minnesota. Davis argues, and we assume for purposes of this appeal, that the area where he stopped his vehicle is land held in trust by the United States for the Mille Lacs Band of Chippewa Indians.

During the stop, Davis told Kimball that his vehicle was uninsured. Kimball also discovered that there was an outstanding warrant for Davis' arrest for a previous failure to provide proof of insurance. Kimball arrested Davis on the warrant and issued Davis a ticket for speeding and driving without proof of insurance.[1]

The Minnesota Chippewa Tribe (MCT) is a federally recognized Indian tribe with six member bands, including the Leech Lake Band and the Mille Lacs Band. Davis is an American Indian registered with the Leech Lake Band. He is not a member of the Mille Lacs Band and does not reside on the Mille Lacs Reservation. At the district court, Davis argued that the court lacked subject-matter jurisdiction because he was an Indian who committed an offense in Indian Country—the Mille Lacs Reservation—and that therefore only the tribal court had jurisdiction.

The district court denied Davis' motion, holding that under *State v. R.M.H.*, 617 N.W.2d 55 (Minn. 2000), the State has jurisdiction over traffic offenses committed on Indian reservations by nonmembers of the reservation. The court of appeals affirmed on the same grounds. *State v. Davis*, No.

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[1] State law provides authority for the Mille Lacs Tribal Police to act as peace officers with the "same powers as peace officers employed by local units of government." Minn. Stat. § 626.90, subd. 3 (2008). "The Mille Lacs County attorney is responsible to prosecute or initiate petitions for any person arrested by" tribal officers acting under this authority. Minn. Stat. § 626.90, subd. 5 (2008).

A07-36, 2008 WL 2726950 (Minn. App. July 15, 2008). We granted Davis' petition for review.

I.

On appeal, Davis argues that the district court did not have jurisdiction, and that the United States Supreme Court implicitly overruled *R.M.H.* in *United States v. Lara*, 541 U.S. 193 (2004). The State contends that *Lara* did not overrule *R.M.H.*, and that *R.M.H.* dictates the conclusion reached by the lower courts that the district court had jurisdiction.[2]

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[2] As an alternative to its reliance on *R.M.H.*, the State argues that the stretch of Highway 169 on which Davis was travelling when the offense was committed was state land and that the offense occurred on state land and not in Indian Country. The State argues that because the offense was committed outside of Indian Country, the state court has jurisdiction. See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973) (noting that if an offense is committed outside of Indian Country, the state has the authority to enforce its laws against Indians in a nondiscriminatory fashion). Indian Country is defined as: (1) all land within the limits of any Indian reservation, including rights-of-way; (2) all dependent Indian communities within the United States; and (3) all Indian allotments to which titles have not been extinguished, including right-of-ways running through the allotments. 18 U.S.C. § 1151 (2006). We need not decide whether Davis committed his offense in Indian County because, as set forth below, even if Davis was in Indian County, the district court has jurisdiction. Because we do not decide this issue, Davis' motion to strike portions of

We review issues of subject-matter jurisdiction de novo. *State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000).

Before addressing the parties" arguments regarding *R.M.H.*, we first discuss federal legislation and case law. These two sources govern the extent of permitted state regulation over matters involving Indians, including the question of when the states are permitted to enforce state law against Indians in state court. *State v. Manypenny*, 682 N.W.2d 143, 148 (Minn. 2004); *see also Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 154 (1980).

The relevant federal act, Public Law 280, is codified as amended at 18 U.S.C. § 1162 (2006) and 28 U.S.C. § 1360 (2006). In Public Law 280, Congress expressly granted Minnesota, along with five other states, jurisdiction over certain civil and criminal matters committed on Indian reservations.[3] Public Law 280 grants the state criminal jurisdiction over "offenses committed by or against Indians . . . to the same extent that [the state] has jurisdiction over offenses committed elsewhere within the state . . . ." 18 U.S.C. § 1162. The law grants similar jurisdiction over civil actions. 28 U.S.C. § 1360.

The United States Supreme Court has held, however, that the civil provision of Public Law 280

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the State's appendix and the State's motion to strike portions of Davis' appendix are denied as moot.

[3] Public Law 280 grants Minnesota civil and criminal jurisdiction in all Indian Country within the state, except for the Red Lake Reservation.

applies only to private civil actions and that this provision does not grant general civil/regulatory authority to the states. *Bryan v. Itasca County*, 426 U.S. 373, 384-85 (1976). Accordingly, in order to determine whether Public Law 280 provides a grant of jurisdiction to the states, we examine the law the state seeks to enforce. If the law is private civil or criminal, Public Law 280 vests the state with jurisdiction. If, however, the law is classified as civil/regulatory, Public Law 280 does not provide a basis for state jurisdiction. *Bryan*, 426 U.S. at 384-86.

In the absence of an express delegation of jurisdiction from Congress, courts engage in a preemption analysis. This analysis balances the federal interests of promoting tribal sovereignty and Indian self-governance and autonomy and any state interests in order to determine whether the state law at issue may operate. *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 884 (1986) ("[W]e have formulated a comprehensive pre-emption inquiry in the Indian law context which examines not only the congressional plan, but also „the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." " (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980))); see also *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 (1987) ("Decision in this case turns on whether state authority is pre-empted by the operation of federal law; and „state jurisdiction is pre-empted . . . if it interferes or is incompatible with

federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." " (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333-34 (1983))).

Based on this background of federal Indian law, we considered in *State v. Stone*, 572 N.W.2d 725, 731 (Minn. 1997), whether speeding and failure to provide proof of insurance were criminal or civil/regulatory offenses. We concluded that because driving is generally permitted subject to regulation, speeding and insurance laws are civil/regulatory laws. *Id.* We determined that the State did not have jurisdiction over traffic offenses committed by a member of the White Earth Band of the MCT on the White Earth Reservation. *Id.* at 731-32. Noting "the limited conditions under which the Supreme Court has allowed on-reservation jurisdiction over member Indians," we held that the State interests at stake in the enforcement of traffic offenses did "not establish[] extraordinary circumstances with which to overcome 'the right of reservation Indians to make their own laws and be ruled by them.' " *Id.* at 732 (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980)). Accordingly, we held that Minnesota could not enforce these traffic laws against Stone in state court. *Id.* at 731-32.

In *R.M.H.*, we reaffirmed that speeding offenses are civil/regulatory. 617 N.W.2d 55, 60 (Minn. 2000). But we came to the opposite conclusion on the question of state jurisdiction. The offense in that case was committed on the White Earth Reservation, but R.M.H. was not a member of the White Earth Band. *Id.* at 57, 61. Rather, R.M.H. was

an enrolled member of the Forest County Potawatomi Community in Wisconsin. *Id.* at 57. We recognized that "Indian sovereignty is at its strongest in the context of self-governance, that is, authority over members of the governing tribe. In contrast, the strength of Indian sovereignty is less with respect to authority over nonmembers of the governing tribe, including nonmember Indians." *Id.* at 61. We held that with respect to the interests of the tribe, nonmember Indians "are, for practical purposes, the same as non-Indians." *Id.* at 63. We analyzed the federal interests in tribal self-governance, economic development and self-sufficiency, and whether there was pervasive federal regulation, and weighed those factors against the "strong" state interest in "regulating the safe flow of traffic." *Id.* at 64-65. Ultimately, we concluded that Minnesota's strong interest in regulating the flow of traffic on state-operated and maintained highways outweighed the minimal federal interests at stake, and we upheld enforcement of the state law in state court. *Id.*

A.

With these background principles in mind, we turn to Davis' argument that our decision in *R.M.H.* has been superseded by *United States v. Lara*, 541 U.S. 193 (2004). Davis' claim is based on the fact that in *R.M.H.* we relied on *Duro v. Reina*, 495 U.S. 676, 695 (1990). We cited *Duro* for the premise that "tribal interest in self-governance is limited to relations between a tribe and its own members, not all Indians generally." *R.M.H.*, 617 N.W.2d at 64.

In *Duro*, the Supreme Court held that Indian tribes did not have criminal jurisdiction over

nonmember Indians. 495 U.S. at 688. In the wake of *Duro*, and prior to our decision in *R.M.H.*, Congress expressly overruled *Duro* by statute, recognizing "the inherent power of Indian tribes . . . to exercise criminal jurisdiction over all Indians." Department of Defense Appropriations Act, Pub. L. No. 101-511, 104 Stat. 1856, 1892 (1991) (codified as amended at 25 U.S.C. § 1301 (2000)). The amendment that overruled *Duro* is known as the "*Duro* fix."

Several years after the amendment was enacted, the Supreme Court discussed the "*Duro* fix" in Lara. The defendant in Lara was an Indian charged with assaulting a police officer on a reservation where he lived but was not a member. 541 U.S. at 196. Lara was prosecuted by the reservation Tribe for the offense in tribal court, but later, after he served his sentence, the United States government charged him in federal court. Lara argued that double jeopardy barred the federal government from prosecuting him. Id. at 197. The Court held that, in the "*Duro* fix," Congress had recognized the "inherent" authority of the tribes to prosecute all Indians. Id. at 206-07. Furthermore, Congress had the power to remove the restriction Congress had previously placed on the tribes" "inherent" power to prosecute nonmember Indians. Id. Because tribal authority was inherent, the Court held that the Tribe and the federal government were separate sovereigns and therefore, double jeopardy did not bar Lara's prosecution in both tribal and federal courts. Id. at 210.

Davis argues that the Supreme Court's consideration of the "*Duro* fix" in Lara effectively overrules *R.M.H.* He also argues that our decision in

R.M.H. is inconsistent with the view of inherent tribal authority adopted by the Supreme Court in *Lara*. See also *Williams v. Lee*, 358 U.S. 217, 220 (1959) (recognizing that tribes have the intrinsic authority to "make their own laws and be ruled by them"). We disagree.

Lara is a federal criminal case that analyzes the application of the Double Jeopardy Clause to Indian and federal prosecutions. The Court stated that its holding that tribes have inherent authority to prosecute Indians was "a limited one" arising from already well-settled principles of Indian law. *Lara*, 541 U.S. at 204. The Court specifically noted that its decision did not involve "interference with the power or authority of any State." *Id.* at 205. We recognize that the interaction between Indian tribes and state government does not present a traditional federalism question because the federal government has ultimate authority over Indian jurisdiction. *See State v. Manypenny*, 682 N.W.2d 143, 148 (Minn. 2004). Nevertheless, the Court's circumscription supports the conclusion that the inherent-tribal-authority language the Court used should not be interpreted to apply as broadly as Davis advocates.

Because the Court expressly limited its holding, *Lara's* broad inherent-tribal-authority language must be read within the confines of the Court's cases that deal specifically with the question of State jurisdiction, an issue not presented in *Lara*. In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the Court recognized that it had not adopted an "inflexible *per se* rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent." *Id.* at

214-15. And the Court has held that States can, on occasion, regulate matters occurring on Indian reservations even in the absence of express Congressional consent. *See, e.g.*, *Rice v. Rehner*, 463 U.S. 713, 715 (1983) (upholding state authority to require a state license for on-reservation store's sale of liquor); *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 156-57 (1980) (upholding state authority to collect sales and cigarette taxes from reservation sales to nonmember Indians); *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 483 (1976) (upholding state authority to collect sales tax from smokeshops on reservation).

For all of these reasons, we hold that *Lara* does not disturb our decision in *R.M.H.*, and we decline to reconsider our holding in that case.

B.

The lower courts held that under *R.M.H.*, the district court has subject-matter jurisdiction. We turn next to consideration of Davis' challenge to these holdings.

In *R.M.H.*, we held that the federal and tribal interests were not strong enough to preempt enforcement of traffic laws in state court where the offender was a nonmember Indian. 617 N.W.2d at 65. Conversely, in *Stone*, citing the federal and tribal interests in allowing tribes to enforce civil/regulatory offenses committed by members of the tribe on the reservation, we held that the State could not enforce in state court its traffic laws against an Indian charged with conduct occurring on his reservation. *Stone*, 572 N.W.2d at 731-32. This case appears to fall in between the factual context of *R.M.H.* and

that presented in *Stone*. Here, Davis is an enrolled member of the Leech Lake Band of the MCT, but the offense was not committed on the Leech Lake Reservation. The offense was committed on the Mille Lacs Reservation, which, like Leech Lake, is an MCT-member reservation.

In challenging the lower courts' determination on the jurisdiction question, Davis seemingly contends that in order for the State to have subject-matter jurisdiction to prosecute him for the traffic offenses with which he was charged, there must be an express grant of authority from Congress, and, he argues, there is no express grant applicable to this case. Specifically, Davis argues that Public Law 280 does not apply because we held in *Stone* that the traffic offenses with which he was charged are civil/regulatory.[4] Therefore, according to Davis, there is no express grant and so the State cannot enforce its laws against him.

Supreme Court precedent does not support Davis' argument that an express grant of jurisdiction is required. *See Cabazon*, 480 U.S. at 214-16. In *Cabazon*, California sought to apply state law regulating bingo to games operated by recognized Indian Tribes on reservations located in California. *Id.* at 204-05. The Tribes sued to enjoin enforcement of the state regulation. *Id.* at 206. The Court first found that the state regulation at issue did not fall within the scope of Public Law 280. *Id.* at 211-12.

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[4] The traffic offenses at issue here—speeding and failing to provide proof of insurance—are civil/regulatory offenses. *State v. Stone*, 572 N.W.2d 725, 731 (Minn. 1997).

The Tribes argued that because Congress had not expressly granted the State jurisdiction to regulate bingo, the State could not regulate on-reservation activity. *Id.* at 214 ("Because the state and county laws at issue here are imposed directly on the Tribes that operate the games, and are not expressly permitted by Congress, the Tribes argue that the judgment below [that precluded operation of the state law] should be affirmed without more."). The Court rejected this "inflexible *per se* rule." *Id.* at 214-15.

Instead of a per se rule, the Court conducted a preemption analysis to determine whether the state law could operate. Under this analysis, " „state jurisdiction is pre-empted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.' " *Id.* at 216 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333, 334 (1983)). This inquiry requires that we "weigh the competing interests at stake" within the "specific factual context" presented. *R.M.H.*, 617 N.W.2d at 64.

With respect to the State interest presented here, we determined in *R.M.H.* that the State has a strong interest in ensuring traffic safety on state highways. 617 N.W.2d at 65. Davis does not contest, and we reaffirm, that the State retains that strong interest. Prosecuting Davis in state court for conduct that occurred on a state highway allegedly in violation of state traffic laws furthers this strong interest.

We next consider whether enforcing Minnesota traffic laws against Davis in state court "interferes or is incompatible with federal and tribal interests." *Cabazon*, 480 U.S. at 216. Unlike *Cabazon*, the record in this case does not reflect that enforcement of state law would interfere with "the sole source of revenues for the operation of tribal governments." *Id.* at 218. Moreover, there is no indication that enforcement of Minnesota traffic laws is inconsistent with federal pronouncements on the topic. *Compare R.M.H.*, 617 N.W.2d at 65 ("The federal government has not imposed a detailed scheme of traffic regulations on tribal reservations and has demonstrated little interest in enforcement of traffic laws on state-operated and maintained highways.") *with Cabazon*, 480 U.S. at 218, 220 (discussing federal law that "promot[es] tribal bingo enterprises," and noting that "the current federal policy is to promote precisely what California seeks to prevent").

But there is a well-recognized federal interest in preserving Indian self-governance and autonomy. *Cabazon*, 480 U.S. at 216 (discussing the "congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development" (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334-35 (1983))). That interest is strongest when the tribe regulates its own members. *See R.M.H.*, 617 N.W.2d at 64 (noting that "federal interest is significantly diminished where, as here, the state exercises jurisdiction over a person who is not a member of the tribe"). Davis, in essence, contends that the interest of self-governance is directly

implicated here because of the governance structure of the MCT.

The dissent argues that *Stone* supports Davis' position on the question of tribal self-governance. In *Stone*, we seemed to conclude that the enforcement of state traffic laws infringed on the White Earth Band's right of self-governance. 572 N.W.2d at 732 (relying on " 'the right of reservation Indians to make their own laws and be ruled by them' " (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980))).[5] But the interest in

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[5] The dissent argues that our decision in Stone requires the court to conclude that the State does not have the authority to prosecute Davis in state court for speeding because he is a member of the MCT and the alleged offense occurred within MCT territory. The dissent contends that, in Stone, the court held that a preemption analysis was unnecessary because exceptional circumstances did not exist. But to read Stone as eliminating the preemption analysis, as the dissent does, would render this aspect of our analysis in Stone arguably inconsistent with the preemption inquiry dictated by the Supreme Court. See 572 N.W.2d at 732. The Supreme Court's formulation of the preemption inquiry in Three Affiliated Tribes does not seem to depend on a finding of exceptional circumstances. See 476 U.S. at 884. And in Cabazon, the Supreme Court expressly stated that it had adopted a per se rule precluding state action without a balancing of interests only in the special area of state taxation. 480 U.S. at 215 n.17. Even in the area of the per se rule however, the Court clarified that the taxation exemption existed

encouraging tribal self-governance that was at issue in *Stone* was the interest of the White Earth Band in regulating the conduct of a White Earth member Indian. The analogous self-governance interest in this case rests not with MCT, as Davis and the dissent argue, but with the Mille Lacs Band where the alleged offense took place.

The Mille Lacs Band statutes make it clear that the political rights of the Band derive from "the inherent and aboriginal rights of the people of *the Band* to self-government." 2 MLBS § 1 (emphasis added). These statutes further clarify that, to the extent the MCT Constitution is the "supreme law of the Band," it is because those inherent rights have "been delegated to establish a constitutional form of government." *Id.* Importantly, the Band did not delegate to the MCT, but reserved to itself, the "power to maintain a Band government." And the Band government has the authority to "enact laws to preserve the sovereignty of the Band and to promote and maintain individual rights and promote the general welfare of the people of the Band." *Id.*

The Mille Lacs Band, pursuant to its own statutes, possesses a government that includes all three branches of government, whereas the MCT does not have a judicial or legislative branch. Indeed, the Band, unlike the MCT, has its own tribal court, as do all of the other six component bands of the

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because "the federal tradition of Indian immunity from state taxation is very strong and that the state interest in taxation is correspondingly weak. Accordingly, it is unnecessary to rebalance these interests in every case." Id.

MCT. Furthermore, Davis' conduct that allegedly violated state law also violates laws passed by the Mille Lacs Band but not the MCT. 19 MLBS § 402 (driving without insurance); 19 MLBS § 403 (speeding). Thus, if Davis were a member of the Mille Lacs Band, the interest in tribal self-governance would be directly served through the Band's enforcement of its laws against one of its members in its tribal court for conduct that occurred on the reservation. But Davis is not a member of the Mille Lacs Band and so operation of state law to Davis' on-reservation conduct does not infringe on the Band's self-governance interest to the same extent as in *Stone*.

We agree with Davis' implicit suggestion that the interests weigh differently in this case than in *R.M.H.* In *R.M.H.*, while the offense was committed on an MCT reservation (White Earth), the defendant did not claim to be a member of the MCT. 617 N.W.2d at 57. By contrast, in this case we are presented with a member of an MCT band who allegedly committed an offense on an MCT reservation. Where it has been delegated from the Mille Lacs Band, the MCT constitution is considered the "supreme law of the Band," and there are many MCT institutions that benefit all MCT members. But the MCT constitution does not possess any apparatus for law enforcement or judicial decision-making. If Davis were to be prosecuted in tribal court, the offense at issue would be governed by a Mille Lacs Band law, and would be tried in a Mille Lacs Band tribal court, areas that cannot be said to have "been delegated" by the Mille Lacs Band to the MCT.

Because the MCT has not been delegated the requisite authority to govern the offenses here, the tribal interest at issue is largely an interest in self-governance of the Mille Lacs Band.[6] The MCT itself has a significantly smaller interest in the prosecution of Davis or the enforcement of the traffic laws of the Mille Lacs Band. Thus, prosecution of Davis in state court for violation of state traffic laws committed while driving on a state highway does not interfere with and is not incompatible with the MCT's interest in self-governance.

For all of these reasons, we hold that Minnesota's traffic laws may be enforced against Davis in state court.

Affirmed.

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[6] The dissent contends that we have concluded "with little explanation that the MCT has no tribal interest in self-governance" and argues that the MCT must "relinquish its interest in self-governance" in order for the State to have jurisdiction. The dissent's characterization of the rights involved here is contrary to the express statutory statements of the Mille Lacs Band itself. The Band has clearly stated that it possesses the inherent right of self-governance unless the Band has chosen to delegate its rights to the MCT. 2 MLBS § 1. Based on the form of self-government chosen by the MCT member bands, it is not the MCT that must relinquish its interest in self-governance, but the Band that must acquiesce and delegate that interest to the MCT.

DISSENT

PAGE, Justice (dissenting).

I respectfully dissent. The court's opinion today relies on the distinction between Indian tribes and Indian bands. Because that distinction violates the Minnesota Chippewa Tribe's (MCT) inherent right to self-governance, *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 168 (1973) ("Indian nations were „distinct political communities, having territorial boundaries, within which their authority is exclusive . . . .' " (citing *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 556 (1832))), and because the conduct at issue here is governed by our decision in *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997), I would reverse the court of appeals.

In *Stone*, we recognized that "Indian tribes retain „attributes of sovereignty over both their members and their territory.' " *Id.* (quoting *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987)).[1] In determining whether Minnesota could exercise its jurisdiction "over the activities of member Indians on reservations without an express federal grant of authority," we based our decision on whether an indirect purpose to regulate non-Indians existed. *Id.* at 731. We held that, for a speeding violation, a preemption analysis was

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[1] In this case, Davis is an enrolled member of the MCT and, on the record before us, it appears that the conduct in question took place within the MCT's territory.

unnecessary because the state could not overcome " 'the right of reservation Indians to make their own laws and be ruled by them.' " *Stone*, 572 N.W.2d at 732 (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980)). In addition, we noted our expectation that Indian tribes would develop methods, based on the available resources of each tribe, to ensure safe driving conditions and the reasonable enforcement of traffic regulations. *Id.* at 732.

Our decision in *Stone* followed directly from a long line of United States Supreme Court cases that affirmed the sovereignty of Indian tribes. In *United States v. Mazurie*, 419 U.S. 544, 557 (1975), the Court stated that "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory." Thus, we start from the principle of inherent tribal sovereignty before acknowledging that "under certain circumstances a State may validly assert authority over the activities of nonmembers on a reservation, and . . . in exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-32 (1983) (quoted in *Cabazon*, 480 U.S. at 215, and *Stone*, 572 N.W.2d at 731). The focus is always on the tribe as the unit of sovereign government. In *Stone*, we said that exceptional circumstances exist primarily if there is "any collateral purpose of controlling non-members." 572 N.W.2d at 732. I believe that because this case is also a traffic violation case, our decision in *Stone* is controlling: "Without exceptional

circumstances, we do not reach the preemption analysis." *Id.*

The MCT is the governing unit federally recognized by the Bureau of Indian Affairs, and the individual bands such as the Leech Lake Band and the Mille Lacs Band are merely "component reservations" of the MCT. Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 73 Fed. Reg. 18,553, 18,555 (Apr. 4, 2008). Yet the court concludes with little explanation that the MCT has no tribal interest in self-governance.[2] Nor does the

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[2] Under the Constitution of the MCT, which is the supreme law of the Mille Lacs Band, the purpose and function of the MCT is to "promote the general welfare of the members of the Tribe; [and] to preserve and maintain justice for its members and otherwise exercise all powers granted and provided the Indians . . . ." MCT Const. art. I, § 3. The court cites to 2 MLBS § 1, which states, in full, that:

> All political powers of the Non-Removable Mille Lacs Bands of Chippewa Indians derive from the . . . inherent and aboriginal rights of the people of the Band to self-government. *Some of these rights have been delegated to establish a constitutional form of government in which the Constitution of the Minnesota Chippewa Tribe is the supreme law of the Band.* The Band has reserved to itself, however, the power to maintain a Band government which

> may enact laws to preserve the sovereignty of the Band and to promote and maintain individual rights and promote the general welfare of the people of the Band.

(Emphasis added.)

The Mille Lacs Band is not a party in this case, and it has made no statements regarding any interest it might have here. The Mille Lacs Band Statute for speeding states that "[e]very person operating a vehicle of any character on a public road within the territorial jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall drive in a careful and prudent manner . . . ." 19 MLBS § 403. On its face, section 403 is not limited to violations by Mille Lacs Band members, and without more information, it is inappropriate for the court to limit the Band's interest in self-governance to Mille Lacs Band members.

Further, nothing in the record supports the court's assumptions that the interests in prohibiting state jurisdiction over a traffic offense were *not* delegated to establish the MCT's "constitutional form of government." Regardless of the extent of the Band's interest in self-governance, the court does not explain why that interest is at odds with, or even relevant to, the MCT's interest in promoting the general welfare of and maintaining justice for its members. Without any such assertion from either the Mille Lacs Band or the MCT, it is inappropriate for this court to define and restrict the scope of the

court cite any authority for the distinction it makes between Indian tribes and Indian bands. I would also note that there is no indication in this record that the MCT has no interest in self-governance or has chosen to relinquish its interest in self-governance. Absent a showing that the MCT has chosen to relinquish its interest in self-governance, it is presumptuous for us to impose such a choice on the MCT. Because we held in *Stone* that no exceptional circumstances exist requiring a preemption analysis for tribal members who are alleged to have been speeding on tribal territory and because Davis is an MCT member whose alleged speeding offense occurred within the MCT's territory, I conclude that the state has no jurisdiction over Davis.[3]

MCT's form of government. Given our precedent in *Stone*, it is enough for me to acknowledge that the MCT is a tribe and Davis is a member of that tribe.

[3] *State v. R.M.H.* provides little guidance in this case because the decision there to conduct a preemption analysis "rest[ed] heavily on the status of R.M.H. as a nonmember Indian." 617 N.W.2d 55, 63 (Minn. 2000). We did, however, acknowledge in *R.M.H.* that the strength of a state's jurisdictional power over "a person on a tribal reservation varies depending on whether that person is an enrolled member of the tribe." *Id.* at 61. Here, Davis is an enrolled member of the tribe.

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0036

State of Minnesota,
Respondent,

vs.

David Michael Davis,
Appellant.

Filed July 15, 2008
Affirmed; motions granted
Toussaint, Chief Judge

Mille Lacs County District Court
File No. CR-05-3441

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Janice S. Kolb, Mille Lacs County Attorney, Tara C. Ferguson Lopez, Assistant County Attorney, Courthouse Square, 525 Second Street Southeast, Milaca, MN 56353 (for respondent)

Frank W. Bibeau, Anishinabe Legal Services, 411 First Street, P.O. Box 157, Cass Lake, MN 56633 (for appellant)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant David Michael Davis, a member of the Minnesota Chippewa Tribe enrolled at Leech Lake Reservation, moved to dismiss misdemeanor charges of speeding and of failure to provide proof of insurance for lack of subject-matter jurisdiction. The district court denied his motion. Appellant then waived his right to a jury trial and proceeded under *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court found appellant guilty. Because the state has subject-matter jurisdiction to prosecute a member of the Minnesota Chippewa Tribe enrolled at Leech Lake Reservation for any traffic offense not committed on Leech Lake Reservation, we affirm. We also grant both parties' motions to strike.

FACTS

On December 3, 2005, a Mille Lacs tribal police officer observed a vehicle "traveling at a high rate of speed" on Highway 169 in Mille Lacs County. The officer "activated [his] radar which indicated the

vehicle was traveling 60 mph in a 45 mph speed zone." The officer stopped the speeding vehicle. Its driver, who was identified as appellant, informed the officer that he did not need insurance because he was Native American. The officer arrested appellant for failure to provide proof of insurance.

Appellant moved to dismiss the charges for lack of subject-matter jurisdiction. He submitted an affidavit stating that he is a "member of the Minnesota Chippewa Tribe, enrolled at Leech Lake Reservation, tribal enrollment number '407C0039312'."[1]

The state requested an "evidentiary" hearing to consider appellant's claim that it lacked subject-matter jurisdiction. But no witnesses were sworn, and no evidence was presented. The district court asked the parties to submit memoranda on the sole issue of whether *State v. R.M.H.*, 617 N.W.2d 55 (Minn. 2000), remains good law in light of *United States v. Lara*, 541 U.S. 193, 124 S. Ct. 1628 (2004).

The district court subsequently ruled that *R.M.H.* remains good law and that the state has authority to "prosecute non-member American Indians who violate traffic laws when the violations take place on tribal land" and denied appellant's motion to dismiss for lack of subject-matter jurisdiction.

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[1] Appellant also asserted that the offense occurred on a tribal road, but the parties later stipulated that it occurred on Highway 169.

DECISION

Issues of subject-matter jurisdiction are questions of law and are reviewed de novo. *R.M.H.*, 617 N.W.2d at 58. "State jurisdiction over Indians is governed by federal statutes or case law." *Id.*; *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997).

Case law provides that speeding and failure to provide proof of insurance are civil/regulatory offenses. *R.M.H.*, 617 N.W. 2d at 60 (speeding); *Stone*, 572 N.W.2d at 728 (failure to provide proof of insurance). The state does not have jurisdiction over civil/regulatory offenses committed by enrolled members of an Indian tribe on their "home" reservation. *State v. Johnson*, 598 N.W.2d 680, 683 (Minn. 1999).

But appellant is enrolled at Leech Lake Reservation, and his offenses occurred on either Mille Lacs Reservation or the exterior boundaries of that reservation.[2] The state has jurisdiction over civil/regulatory traffic offenses committed on a reservation by a Native American who is not an enrolled member of the governing tribe of that reservation or a "nonmember" Native American.

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[2] *See County of Mille Lacs v. Benjamin*, 262 F. Supp. 2d 990 (D. Minn. 2003) (discussing history of dispute regarding legal status of boundaries of Mille Lacs Reservation), *aff'd in part & rev'd in part*, 361 F.3d 460 (8th Cir. 2004).

R.M.H.,617 N.W.2d at 57, 65 (concluding that state had jurisdiction over speeding and driving without license on Minnesota state highway within boundaries of reservation of White Earth Band of Chippewa Indians by enrolled member of Wisconsin Indian tribe). Thus, *R.M.H.* defeats appellant's lack-of-jurisdiction argument.

Appellant argues that *R.M.H.* is not good law because it does not address *United States v. Lara*, 541 U.S. 193, 124 S. Ct. 1628 (2004). That argument is properly addressed by the supreme court, not this court. *See Terault v. Palmer*, 413 N.W.2d 281, 286 (Minn. App. 1987) ("task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987); *see also State v. Losh*, 739 N.W.2d 730 (Minn. App. 2007) (affirming, on different grounds, district court's decision applying *R.M.H.* to conclude that state had jurisdiction over member of Mille Lacs Band charged with driving after revocation on Leech Lake Reservation), *review granted* (Minn. Dec. 19, 2007). Here, the district court correctly applied *R.M.H.* to conclude that the state has jurisdiction over appellant's offenses.

Appellant also argues that, because he is a member of one Minnesota Chippewa Tribe band and his offenses occurred on the reservation of another Minnesota Chippewa Tribe band, he is not a "nonmember" Native American within the meaning of *R.M.H.*, 617 N.W.2d at 65. But the operative facts

are that the state has jurisdiction over appellant's offenses everywhere except on the reservation where he is enrolled, and his offenses did not occur on that reservation. Appellant provides no tribal or other authority to support his view that enrollment in one Minnesota Chippewa Tribe band equates to enrollment in all Minnesota Chippewa Tribe bands. The district court correctly decided that appellant is a "nonmember" Native American on the reservation where his offenses were committed; therefore, the state has jurisdiction over those offenses.

Finally, both parties made motions to strike. The state moves to strike two issues from appellant's brief, arguing that these issues were not raised before the district court and are outside our scope of review. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (this court does not generally address matters not presented to and considered by district court). Appellant moves to strike portions of the state's appendix that are not part of the district court record. *See* Minn. R. Civ. App. P. 110.01 (record on appeal composed of papers filed in district court, exhibits, and transcript). Because two issues in appellant's brief are raised for the first time on appeal and because the challenged materials are not part of the record on appeal, we grant both motions to strike.

Affirmed; motions to strike granted.

STATE OF MINNESOTA

COUNTY OF MILLE LACS

SEVENTH JUDICIAL DISTRICT

TRAFFIC COURT

CASE TYPE: CRIMINAL

State of Minnesota,

Plaintiff,

Court File No. CR-05-3441

vs.

David Michael Davis,

Defendant.

Filed 10-11-06
Mille Lacs County
District Court
By Carrie

VERDICT

The above-captioned matter came before Steven P. Ruble, District court Judge, for a settlement conference on October 2, 2006. Tara Ferguson-Lopez, Assistant Mille Lacs County Attorney, appeared on behalf of the State. Defendant was represented by Frank Bibeau. At the October 2, 2006 settlement conference, the parties agreed to submit this matter to the Court for trial on

stipulated facts pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980).

FINDINGS OF FACT

On the night of December 3, 2005, defendant was operating his motor vehicle on State Highway 169 in Mille Lacs County. Mille Lacs Tribal Police Officer Joshua Kimball was on routine patrol in that area at the same time. Kimball visually observed defendant's vehicle traveling at what Kimball thought was an excessive rate of speed. Kimball, using the radar equipment in his squad car, confirmed that defendant was, in fact, exceeding the posted speed limit by approximately 15 m.p.h. Kimball than activated his vehicle's emergency lights and lawfully stopped defendant's vehicle. The actual stop took place at Ataage Drive in North Kathio, Mille Lacs County, Minnesota. That section of Ataage Drive is part of the Mille Lacs Reservation.

During the course of the stop, defendant informed Kimball that defendant's vehicle was uninsured. Kimball also learned through police dispatch that there was an outstanding warrant for defendant's arrest from another county. That warrant was for failure to provide proof of insurance. Kimball took defendant into custody on the outstanding warrant. Kimball subsequently issued defendant a ticket for both for speeding and driving without insurance.

Defendant is an American Indian. In an affidavit dated January 3, 2006, he purports to be a

registered member of Leech Lake Chippewa Tribe. His tribal enrollment number is 407C0039312. He is not, and has never claimed to be, a member of the Mille Lacs Band. Defendant does not live on the Mille Lacs Reservation.

VERDICT

1. The Court finds that the State has proven beyond a reasonable doubt that defendant is guilty of speeding in violation of Minn.Stat. § 169.14, Subd. 5.
2. The Court finds that the State has proven beyond a reasonable doubt that defendant is guilty of not having motor-vehicle insurance in violation of Minn.Stat. § 169.797, Subd. 2.

Dated: October 11, 2006 s/ Steven P. Ruble

Steven P. Ruble
District Court Judge

STATE OF MINNESOTA)
) SS.
COUNTY OF MILLE LACS)

I George Lock, Court Administrator is and for said County and State aforesaid, do hereby Certify that the above is a true and correct copy of the original on file and of record in this office.

Dated this 11 day of October 2006
George Lock, Court Administrator
By: _____ Deputy

STATE OF MINNESOTA

SEVENTH JUDICIAL DISTRICT

COUNTY OF MILLE LACS

CASE TYPE: CRIMINAL

TRAFFIC COURT

State of Minnesota,

Plaintiff,

vs.

David Michael Davis,

Defendant.

Court File No. CR-05-3441

Filed 7-25-06
Mille Lacs County
District Court
By Carrie

ORDER

The above-captioned matter came before Steven P. Ruble, District Court Judge, for an evidentiary hearing on March 9, 2006. Tara Ferguson-Lopez, Assistant Mille Lacs County Attorney, appeared on behalf of the State. Defendant was represented by Frank Bibeau. Defendant submitted a brief on April 11, 2006. The State submitted a brief on May 22, 2006.

The only issue that defendant raised at the March 9, 2005 evidentiary hearing is whether this

Court has subject-matter jurisdiction to prosecute the traffic offenses with which he is charged.

STATEMENT OF FACTS

On the night of December 3, 2005, defendant was operating his motor vehicle on State Highway 169 in Mille Lacs County. Mille Lacs Tribal Police Officer Joshua Kimball was on routine patrol in that area at the same time. Kimball visually observed defendant's vehicle traveling at what Kimball thought was an excessive rate of speed. Using the radar equipment in his squad car, Kimball confirmed that defendant was exceeding the posted speed limit by approximately 15 m.p.h. Kimball then activated his vehicle's emergency lights and lawfully stopped defendant's vehicle. The actual stop took place on Ataage Drive in North Kathio, Mille Lacs County, Minnesota. That section of Ataage Drive is part of the Mille Lacs Reservation.

During the course of the stop, defendant informed Kimball that defendant's vehicle was uninsured. Kimball eventually cited defendant both for speeding and driving without insurance.

Defendant is an American Indian. He is apparently a registered member of Leech Lake Chippewa Tribe.[1] He is not, and does not claim to be,

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[1] For the limited purpose of ruling on defendant's evidentiary challenge, the Court is prepared to

tribal member of the Mille Lacs Band. Defendant does not live on the Mille Lacs Reservation.

CONCLUSIONS OF LAW

Defendant argues that the State lacks subject-matter jurisdiction over the civil/regulatory crimes with which he is charged. Defendant specifically argues that because he is an American Indian registered with a recognized tribe, he cannot be prosecuted for traffic offenses on tribal land, even if the offenses occur on tribal land belonging to a tribe of which he is not a member. Defendant points to the relatively recent United States Supreme Court case *United States vs. Lara, 541 U.S. 193, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004)* in support of his argument.

Under existing Minnesota case law, however, the State clearly has the authority to prosecute non-member American Indians who violate traffic laws when the violations take place on tribal land. See *State v. R.M.H.*, 617 N.W.2d 55 (Minn. 2000) (State has jurisdiction to enforce its speeding and driver's license laws against American Indian motorist who committed offenses on state highway located on reservation of Indian tribe of which American Indian motorist was not an enrolled member). *State v.*

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assume that defendant is, in fact, a member of the Leech Lake Tribe.

R.M.H. has not been overruled, it remains "good law," and it is therefore binding on this Court.

Furthermore, this identical issue was recently addressed by the Minnesota Court of Appeals. In an unpublished opinion, *State v. Hart*, 2006 WL 1229587, the appeals court rejected an argument identical to the one defendant makes here. The appeals court refused to find that the *Lara* decision either explicitly or impliedly overruled *State v. R.M.H.* The appeals court elected to defer to the Minnesota Supreme Court's ruling in *R.M.H.*, and this Court shall do the same.

ORDER

Defendant's motion to dismiss is **DENIED**.

Dated: July 25, 2006

s/ Steven P. Ruble
Steven P. Ruble
District Court Judge

REVISED CONSTITUTION AND BYLAWS OF THE MINNESOTA CHIPPEWA TRIBE, MINNESOTA

PREAMBLE

We, the Minnesota Chippewa Tribe, consisting of the Chippewa Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians, in order to form a representative Chippewa tribal organization, maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare for ourselves and descendants, do establish and adopt this constitution for the Chippewa Indians of Minnesota in accordance with such privilege granted the Indians by the United States under existing law.

ARTICLE 1 - ORGANIZATION AND PURPOSE

Section 1. The Minnesota Chippewa Tribe is hereby organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

Section 2. The name of this tribal organization shall be the "Minnesota Chippewa Tribe."

Section 3. The purpose and function of this organization shall be to conserve and develop tribal resources and to promote the conservation and development of individual Indian trust property; to

promote the general welfare of the members of the Tribe; to preserve and maintain justice for its members and otherwise exercise all powers granted and provided the Indians, and take advantage of the privileges afforded by the Act of June 18, 1934 (48 Stat. 984) and acts amendatory thereof or supplemental thereto, and all the purposes expressed in the preamble hereof.

Section 4. The Tribe shall cooperate with the United States in its program of economic and social development of the Tribe or in any matters tending to promote the welfare of the Minnesota Chippewa Tribe of Indians.

ARTICLE II - MEMBERSHIP

Section 1. The membership of the Minnesota Chippewa Tribe shall consist of the following:

(a) Basic Membership Roll. All persons of Minnesota Chippewa Indian blood whose names appear on the annuity roll of April 14, 1941, prepared pursuant to the Treaty with said Indians as enacted by Congress in the Act of January 14, 1889 (25 Stat. 642) and Acts amendatory thereof, and as corrected by the Tribal Executive Committee and ratified by the Tribal Delegates, which roll shall be known as the basic membership roll of the Tribe.

(b) All children of Minnesota Chippewa Indian blood born between April 14, 1941, the date of the annuity roll, and July 3, 1961, the date of approval of the membership ordinance by the Area Director, to a

parent or parents, either or both of whose names appear on the basic membership roll, provided an application for enrollment was filed with the Secretary or the Tribal Delegates by July 4, 1962, one year after the date of approval of the ordinance by the Area Director.

(c) All children of at least one quarter 1/4 degree Minnesota Chippewa Indian blood born after July 3, 1961, to a member, provided that an application for enrollment was or is filed with the Secretary of the Tribal Delegates of the Tribal Executive Committee within one year after the date of birth of such children.

Section 2. No person born after July 3, 1961, shall be eligible for enrollment if enrolled as a member of another tribe, or if not an American citizen.

Section 3. Any person of Minnesota Chippewa Indian blood who meets the membership requirements of the Tribe, but who because of an error has not been enrolled, may be admitted to membership in the Minnesota Chippewa Tribe by adoption, if such adoption is approved by the Tribal Executive Committee, and shall have full membership privileges from the date the adoption is approved.

Section 4. Any person who has been rejected for enrollment as a member of the Minnesota Chippewa Tribe shall have the right of appeal within sixty days from the date of written notice of rejection to the Secretary of the Interior from the decision of the

Tribal Executive Committee and the decision of the Secretary of Interior shall be final.

Section 5. Nothing contained in this article shall be construed to deprive any descendant of a Minnesota Chippewa Indian of the right to participate in any benefits derived from claims against the U.S. Government when awards are made for and on behalf and for the benefit of descendants of members of said tribe.

ARTICLE III - GOVERNING BODY

The governing bodies of the Minnesota Chippewa Tribe shall be the Tribal Executive Committee and the Reservation Business Committees of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations, and the Nonremoval Mille Lac Band of Chippewa Indians, hereinafter referred to as the six (6) Reservations.

Section 1. Tribal Executive Committee. The Tribal Executive Committee shall be composed of the Chairman and Secretary-Treasurer of each of the six (6) Reservation Business Committees elected in accordance with Article IV. The Tribal Executive Committee shall, at its first meeting, select from within the group a President, a Vice-President, a Secretary, and a Treasurer who shall continue in office for a period of two (2) years or until their successors are elected and seated.

Sec. 2. Reservation Business Committee. Each of the six (6) Reservations shall elect a Reservation

Business Committee composed of not more than five (5) members nor less than three (3) members. The Reservation Business Committee shall be composed of a Chairman, Secretary-Treasurer, and one (1), two (2), or three (3) Committeeman. The candidates shall file for their respective offices and shall hold their office during the term for which they were elected or until their successors are elected and seated.

ARTICLE IV - TRIBAL ELECTIONS

Section 1. Right to Vote. All elections held on the six (6) Reservations shall be held in accordance with a uniform election ordinance to be adopted by the Tribal Executive Committee which shall provide that:

(a) All members of the tribe, eighteen (18) years of age or over, shall have the right to vote at all elections held within the reservation of their enrollment. 1/

(b) All elections shall provide for absentee ballots and secret ballot voting.

(c) Each Reservation Business Committee shall be the sole judge of the qualifications of its voters.

(d) The precincts, polling places, election boards, time for opening and closing the polls, canvassing the vote and all pertinent details shall be clearly described in the ordinance.

Sec. 2. Candidates. A candidate for Chairman, Secretary-Treasurer and Committeeman must be an enrolled member of the Tribe and reside on the reservation of his enrollment. No member of the Tribe shall be eligible to hold office, either as a Committeeman of Officer, until he or she shall have reached his or her twenty-first (21) birthday on or before the date of election. 2/

Sec. 3. Term of Office.

(a) The first election of the Reservation Business Committee for the six (6) Reservations shall be called and held within ninety (90) days after the date on which these amendments became effective in accordance with Section 1, of this Article.

(b) For the purpose of the first election, the Chairman and one (1) Committeeman shall be elected for a four-year term. The Secretary-Treasurer and any remaining Committeemen shall be elected for a two-year term. Thereafter, the term of office for Officers and Committeemen shall be four (4) years. For the purpose of the first election, the Committeeman receiving the greatest number of votes shall be elected for a four-year term.

ARTICLE V - AUTHORITIES OF THE TRIBAL EXECUTIVE COMMITTEE

Section 1. The Tribal Executive Committee shall, in accordance with applicable laws or regulations of the Department of the Interior, have the following powers:

(a) To employ legal counsel for the protection and advancement of the rights of the Minnesota Chippewa Tribe; the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, or his authorized representative.

(b) To prevent any sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other assets including minerals, gas and oil.

(c) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Minnesota Chippewa Tribe, except where such appropriation estimates or projects are for the benefit of individual Reservations.

(d) To administer any funds within the control of the Tribe; to make expenditures from tribal funds for salaries, expenses of tribal officials, employment or other tribal purposes. The Tribal Executive Committee shall apportion all funds within its control to the various Reservations excepting funds necessary to support the authorized costs of the Tribal Executive Committee. All expenditures of tribal funds, under control of the Tribal Executive Committee, shall be in accordance with a budget, duly approved by resolution in legal session, and the amounts so expended shall be a matter of public record at all reasonable times. The Tribal Executive Committee shall prepare annual budgets, requesting advancements to the control of the Tribe of any money deposited to the credit of the Tribe in the

United States Treasury, subject to the approval of the Secretary of the Interior or his authorized representative.

(e) To consult, negotiate, contract and conclude agreements on behalf of the Minnesota Chippewa Tribe with Federal, State and local governments or private persons or organizations on all matters within the powers of the Tribal Executive Committee, except as provided in the powers of the Reservation Business Committee.

(f) Except for those powers hereinafter granted to the Reservation Business Committees, the Tribal Executive Committee shall be authorized to manage, lease, permit, or otherwise deal with tribal lands, interests in lands or other tribal assets; to engage in any business that will further the economic well being of members of the Tribe; to borrow money from the Federal Government or other sources and to direct the use of such funds for productive purposes, or to loan the money thus borrowed to Business Committees of the Reservations and to pledge or assign chattel or income, due or to become due, subject only to the approval of the Secretary of the Interior or his authorized representative, when required by Federal law or regulations.

(g) The Tribal Executive Committee may by ordinance, subject to the review of the Secretary of the Interior, levy licenses or fees on non-members or non-tribal organizations doing business on two or more Reservations.

(h) To recognize any community organizations, associations or committees open to members of the several Reservations and to approve such organizations, subject to the provision that no such organizations, associations or committees may assume any authority granted to the Tribal Executive Committee or to the Reservation Business Committees.

(i) To delegate to committees, officers, employees or cooperative associations any of the foregoing authorities, reserving the right to review any action taken by virtue of such delegated authorities.

ARTICLE VI - AUTHORITIES OF THE RESERVATION BUSINESS COMMITTEES

Section 1. Each of the Reservation Business Committees shall, in accordance with applicable laws or regulations of the Department of Interior, have the following powers:

(a) To advise with the Secretary of the Interior with regard to all appropriation estimates on Federal projects for the benefit of its Reservation.

(b) To administer any funds within the control of the Reservation; to make expenditures from Reservation funds for salaries, expenses of Reservation officials, employment or other Reservation purposes. All expenditures of Reservations funds under the control of the Reservation Business Committees shall be in accordance with a budget, duly approved by resolution in legal session, and the amounts so

expended shall be a matter of public record at all reasonable times. The Business Committees shall prepare annual budgets requesting advancements to the control of the Reservation of tribal funds under the control of the Tribal Executive Committee.

(c) To consult, negotiate and contract and conclude agreements on behalf of its respective Reservation with Federal, State and local governments or private persons or organizations on all matters within the power of the Reservation Business Committee, provided that no such agreements or contracts shall directly affect any other Reservation or the Tribal Executive Committee without their consent. The Business Committee shall be authorized to manage, lease, permit or otherwise deal with tribal lands, interests in lands or other tribal assets, when authorized to do so by the Tribal Executive Committee but no such authorization shall be necessary in the case of lands or assets owned exclusively by the Reservation. To engage in any business that will further the economic well being of members of the Reservation; to borrow money from the Federal Government or other sources and to direct the use of such funds for productive purposes or to loan the money thus borrowed to members of the Reservation and to pledge or assign Reservation chattel or income due or to become due, subject only to the approval of the Secretary of the Interior or his authorized representative when required by Federal law and regulations. The Reservation Business Committee may also, with the consent of the Tribal Executive Committee, pledge or assign tribal chattel or income.

(d) The Reservation Business Committee may by ordinance, subject to the review of the Secretary of the Interior, levy licenses or fees on non-members or non-tribal organizations doing business solely within their respective Reservations. A Reservation Business Committee may recognize any community organization, association or committee open to members of the Reservation or located within the Reservation and approve such organization, subject to the provision that no such organization, association or committee may assume any authority granted to the Reservation Business Committee or to the Tribal Executive Committee.

(e) To delegate to committees, officers, employees or cooperative associations any of the foregoing authorities, reserving the right to review any action taken by virtue of such delegated authorities.

(f) The powers heretofore granted to the bands by the charters issued by the Tribal Executive Committee are hereby superceded by this Article and said charters will no longer be recognized for any purposes.

ARTICLE VII - DURATION OF TRIBAL CONSTITUTION

Section 1. The period of duration of this tribal constitution shall be perpetual or until revoked by lawful means as provided in the Act of June 18, 1934 (48 Stat. 984), as amended.

ARTICLE VIII - MAJORITY VOTE

Section 1. At all elections held under this constitution, the majority of eligible voter cast shall rule, unless otherwise provided by an Act of Congress.

ARTICLE IX - BONDING OF TRIBAL OFFICIALS

Section 1. The Tribal Executive Committee and the Reservation Business Committees, respectively, shall require all persons, charged by the Tribe or Reservation with responsibility for the custody of any of its funds or property, to give bond for the faithful performance of his official duties. Such bond shall be furnished by a responsible bonding company and shall be acceptable to the beneficiary thereof and the Secretary of the Interior or his authorized representative, and the cost thereof shall be paid by the beneficiary.

ARTICLE X - VACANCIES AND REMOVAL

Section 1. Any vacancy in the Tribal Executive Committee shall be filled by the Indians from the Reservation on which the vacancy occurs by election under rules prescribed by the Tribal Executive Committee. During the interim, the Reservation Business Committee shall be empowered to select a temporary Tribal Executive Committee member to represent the Reservation until such time as the election herein provided for has been held and the successful candidate elected and seated.

Section. 2. The Reservation Business Committee by a two-thirds (2/3) vote of its members shall remove any officer or member of the Committee for the following causes:

(a) Malfeasance in the handling of tribal affairs.

(b) Dereliction or neglect of duty.

(c) Unexcused failure to attend two regular meetings in succession.

(d) Conviction of a felony in any county, State or Federal court while serving on the Reservation Business Committee.

(e) Refusal to comply with any provisions of the Constitution and Bylaws of the Tribe.

The removal shall be in accordance with the procedures set forth in Section 3 of this Article.

Section 3. Any member of the Reservation from which the Reservation Business Committee member is elected may prefer charges by written notice supported by the signatures of no less than 20 percent of the resident eligible voters of said Reservation, stating any of the causes for removal set forth in Section 2 of this Article, against any member or members of the respective Reservation Business Committee. The notice must be submitted to the Business Committee. The Reservation Business Committee shall consider such notice and take the following action:

(a) The Reservation Business Committee within fifteen (15) days after receipt of the notice or charges shall in writing notify the accused of the charges brought against him and set a date for a hearing. If the Reservation Business Committee deems the accused has failed to answer charges to its satisfaction or fails to appear at the appointed time, the Reservation Business Committee may remove as provided in Section 2 or it may schedule a recall election which shall be held within thirty (30) days after the date set for the hearing. In either event, the action of the Reservation Business Committee or the outcome of the recall election shall be final.

(b) All such hearings of the Reservation Business Committee shall be held in accordance with the provisions of this Article and shall be open to the members of the Reservation. Notices of such hearings shall be duly posted at least five (5) days prior to the hearing.

(c) The accused shall be given opportunity to call witnesses and present evidence in his behalf.

Section 4. When the Tribal Executive Committee finds any of its members guilty of any of the causes for removal from office as listed in Section 2 of this Article, it shall in writing censor the Tribal Executive Committee member. The Tribal Executive Committee shall present its written censure to the Reservation Business Committee from which the Tribal Executive Committee member is elected. The Reservation Business Committee shall thereupon

consider such censure in the manner prescribed in Section 3 of this Article.

Section 5. In the event the Reservation Business Committee fails to act as provided in Sections 3 and 4 of this Article, the Reservation membership may, by petition supported by the signatures of no less than 20 percent of the eligible resident voters, appeal to the Secretary of the Interior. If the Secretary deems the charges substantial, he shall call an election for the purpose of placing the matter before the Reservation electorate for their final decision.

ARTICLE XI - RATIFICATION

Section 1. This constitution and the bylaws shall not become operative until ratified at a special election by a majority vote of the adult members of the Minnesota Chippewa Tribe, voting at a special election called by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote, and until it has been approved by the Secretary of the Interior.

ARTICLE XII - AMENDMENT

Section 1. This constitution may be revoked by Act of Congress or amended or revoked by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior if at least 30 percent of those entitled to vote shall vote. No amendment shall be effective until approved by the Secretary of the Interior. It

shall be the duty of the Secretary to call an election when requested by two-thirds of the Tribal Executive Committee.

ARTICLE XIII - RIGHTS OF MEMBERS

All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

ARTICLE XIV - REFERENDUM

Section 1. The Tribal Executive Committee, upon receipt of a petition signed by 20 percent of the resident voters of the Minnesota Chippewa Tribe, or by an affirmative vote of eight (8) members of the Tribal Executive Committee, shall submit any enacted or proposed resolution or ordinance of the Tribal Executive Committee to a referendum of the eligible voters of the Minnesota Chippewa Tribe. The majority of the votes cast in such referendum shall be conclusive and binding on the Tribal Executive Committee. The Tribal Executive Committee shall call such referendum and prescribe the manner of conducting the vote.

Section 2. The Reservation Business Committee, upon receipt of a petition signed by 20 percent of the resident voters of the Reservation, or by an affirmative vote of a majority of the members of the Reservation Business Committee, shall submit any enacted or proposed resolution or ordinance of the Reservation Business Committee to a referendum of the eligible voters of the Reservation. The majority of the votes cast in such referendum shall be conclusive and binding on the Reservation Business Committee. The Reservation Business Committee shall call such referendum and prescribe the manner of conducting the vote.

ARTICLE XV - MANNER OF REVIEW

Section 1. Any resolution or ordinance enacted by the Tribal Executive Committee, which by the terms of this Constitution and Bylaws is subject to review by the Secretary of the Interior, or his authorized representative, shall be presented to the Superintendent or officer in charge of the Reservation who shall within ten (10) days after its receipt by him approve or disapprove the resolution or ordinance.

If the Superintendent or officer in charge shall approve any ordinance or resolution it shall thereupon become effective, but the Superintendent or officer in charge shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within ninety (90) days from the date of approval, rescind the ordinance or resolution

for any cause by notifying the Tribal Executive Committee.

If the Superintendent or officer in charge shall refuse to approve any resolution or ordinance subject to review within ten (10) days after its receipt by him he shall advise the Tribal Executive Committee of his reasons therefor in writing. If these reasons are deemed by the Tribal Executive Committee to be insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within ninety (90) days from the date of its referral, approve or reject the same in writing, whereupon the said ordinance or resolution shall be in effect or rejected accordingly.

Section 2. Any resolution or ordinance enacted by the Reservation Business Committee, which by the terms of this Constitution and Bylaws is subject to review by the Secretary of the Interior or his authorized representative, shall be governed by the procedures set forth in Section 1 of this Article.

Section 3. Any resolution or ordinance enacted by the Reservation Business Committee, which by the terms of this Constitution and Bylaws is subject to approval by the Tribal Executive Committee, shall within ten (10) days of its enactment be presented to the Tribal Executive Committee. The Tribal Executive Committee shall at its next regular or special meeting, approve or disapprove such resolution or ordinance.

Upon approval or disapproval by the Tribal Executive Committee of any resolution or ordinance submitted by a Reservation Business Committee, it shall advise the Reservation Business Committee within ten (10) days, in writing, of the action taken. In the event of disapproval the Tribal Executive Committee shall advise the Reservation Business Committee, at that time, of its reasons therefore.

BYLAWS

ARTICLE I - DUTIES OF THE OFFICERS OF THE TRIBAL EXECUTIVE COMMITTEE

Section 1. The President of the Tribal Executive Committee shall:

(a) Preside at all regular and special meetings of the Tribal Executive Committee and at any meeting of the Minnesota Chippewa Tribe in general council.

(b) Assume responsibility for the implementation of all resolutions and ordinances of the Tribal Executive Committee.

(c) Sign, with the Secretary of the Tribal Executive Committee, on behalf of the Tribe all official papers when authorized to do so.

(d) Assume general supervision of all officers, employees and committees of the Tribal Executive Committee and, as delegated, take direct responsibility for the satisfactory performance of such officers, employees and committees.

(e) Prepare a report of negotiations, important communications and other activities of the Tribal Executive Committee and shall make this report at each regular meeting of the Tribal Executive Committee. He shall include in this report all matters of importance to the Tribe, and in no way shall he act for the Tribe unless specifically authorized to do so.

(f) Have general management of the business activities of the Tribal Executive Committee. He shall not act on matters binding the Tribe until the Tribal Executive Committee has deliberated and enacted appropriate resolution, or unless written delegation of authority has been granted.

(g) Not vote in meetings of the Tribal Executive Committee except in the case of a tie.

Section 2. In the absence or disability of the President, the Vice-President shall preside. When so presiding, he shall have all rights, privileges and duties as set forth under duties of the President, as well as the responsibility of the President.

Section 3. The Secretary of the Tribal Executive Committee shall:

(a) Keep a complete record of the meetings of the Tribal Executive Committee and shall maintain such records at the headquarters of the Tribe.

(b) Sign, with the President of the Tribal Executive Committee, all official papers as provided in Section 1 (c) of this Article.

(c) Be the custodian of all property of the Tribe.

(d) Keep a complete record of all business of the Tribal Executive Committee. Make and submit a complete and detailed report of the current year's business and shall submit such other reports as shall be required by the Tribal Executive Committee.

(e) Serve all notices required for meetings and elections.

(f) Perform such other duties as may be required of him by the Tribal Executive Committee.

Section 4. The Treasurer of the Tribal Executive Committee shall:

(a) Receive all funds of the Tribe entrusted to it, deposit same in a depository selected by the Tribal Executive Committee, and disburse such tribal funds only on vouchers signed by the President and Secretary.

(b) Keep and maintain, open to inspection by members of the Tribe or representatives of the Secretary of the Interior, at all reasonable times, adequate and correct accounts of the properties and business transactions of the Tribe.

(c) Make a monthly report and account for all transactions involving the disbursement, collection or obligation of tribal funds. He shall present such financial reports to the Tribal Executive Committee at each of its regular meetings.

Section 5. Duties and functions of all appointive committees, officers, and employees of the Tribal Executive Committee shall be clearly defined by resolution of the Tribal Executive Committee.

ARTICLE II - TRIBAL EXECUTIVE COMMITTEE MEETINGS

Section 1. Regular meetings of the Tribal Executive Committee shall be held once in every 3 months beginning on the second Monday in July of each year and on such other days of any month as may be designated for that purpose.

Section 2. Notice shall be given by the Secretary of the Tribal Executive Committee of the date and place of all meetings by mailing a notice thereof to the members of the Tribal Executive Committee not less than 15 days preceding the date of the meeting.

Section 3. The President shall call a special meeting of the Tribal Executive Committee upon a written request of at least one-third of the Tribal Executive Committee. The President shall also call a special meeting of the Tribal Executive Committee when matters of special importance pertaining to the Tribe arise for which he deems advisable the said Committee should meet.

Section 4. In case of special meetings designated for emergency matters pertaining to the Tribe, or those of special importance warranting immediate action of said Tribe, the President of the Tribal Executive Committee may waive the 15-day clause provided in Section 2 of this Article.

Section 5. Seven members of the Tribal Executive Committee shall constitute a quorum, and Robert's Rules shall govern its meetings. Except as provided in said Rules, no business shall be transacted unless a quorum is present.

Section 6. The order of business at any meeting so far as possible shall be:

(a) Call to order by the presiding officer.

(b) Invocation.

(c) Roll call.

(d) Reading and disposal of the minutes of the last meeting.

(e) Reports of committees and officers.

(f) Unfinished business.

(g) New business.

(h) Adjournment.

ARTICLE III

Section 1. New members of the Tribal Executive Committee who have been duly elected by the respective Reservations shall be installed at the first regular meeting of the Tribal Executive Committee following election of the committee members, upon subscribing to the following oath:

"I, _____, do hereby solemnly swear (or affirm) that I shall preserve, support and protect the Constitution of the United States and the Constitution of the Minnesota Chippewa Tribe, and execute my duties as a member of the Tribal Executive Committee to the best of my ability, so help me God."

ARTICLE IV - AMENDMENTS

Section 1. These bylaws may be amended in the same manner as the Constitution.

ARTICLE V - MISCELLANEOUS

Section 1. The fiscal year of the Minnesota Chippewa Tribe shall begin on July 1 of each year.

Section 2. The books and records of the Minnesota Chippewa Tribe shall be audited at least once each year by a competent auditor employed by the Tribal Executive Committee, and at such times as the Tribal Executive Committee or the Secretary of the Interior or his authorized representative may direct.

Copies of audit reports shall be furnished the Bureau of Indian Affairs.

ARTICLE VI - RESERVATION BUSINESS COMMITTEE BYLAWS

Section 1. The Reservation Business Committee shall by ordinance adopt bylaws to govern the duties of its officers and Committee members and its meetings.

Section 2. Duties and functions of all appointive committees, officers, and employees of the Reservation Business Committee shall be clearly defined by resolution of the Reservation Business Committee.

CERTIFICATION OF ADOPTION

Pursuant to an order approved September 12, 1963, by the Assistant Secretary of the Interior, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe was submitted for ratification to the qualified voters of the reservations, and was on November 23, 1963, duly adopted by a vote of 1,761 for and 1,295 against, in an election in which at least 30 percent of those entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

1/ As amended per Amendment 1, approved by Secretary of Interior 11/6/72.

2/ As amended per Amendment II, approved by Secretary of Interior 11/6/72.

(sgd) Allen Wilson, President
Tribal Executive Committee

(sgd) Peter DuFault, Secretary
Tribal Executive Committee

(sgd) H.P. Mittelholtz, Superintendent
Minnesota Agency

APPROVAL

I, John A. Carver, Jr., Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approved the attached Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota.

John A. Carver, Jr.
Assistant Secretary of the Interior
Washington, D.C.
(SEAL) Date: March 3, 1964

REVISED CONSTITUTION AND BYLAWS OF THE MINNESOTA CHIPPEWA TRIBE, MINNESOTA

PREAMBLE

We, the Minnesota Chippewa Tribe, consisting of the Chippewa Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians, in order to form a representative Chippewa tribal organization, maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare for ourselves and descendants, do establish and adopt this constitution for the Chippewa Indians of Minnesota in accordance with such privilege granted the Indians by the United States under existing law.

ARTICLE 1 - ORGANIZATION AND PURPOSE

Section 1. The Minnesota Chippewa Tribe is hereby organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

Section 2. The name of this tribal organization shall be the "Minnesota Chippewa Tribe."

Section 3. The purpose and function of this organization shall be to conserve and develop tribal resources and to promote the conservation and development of individual Indian trust property; to

MINNESOTA REVENUE

August 13, 2002

Norman Deschampe, President
Minnesota Chippewa Tribe
P.O. Box 217
Cass Lake, MN 56633-0217

Dear President Deschampe:

I write to you today to announce that the Minnesota Department of Revenue is adopting the position advocated by the Minnesota Chippewa Tribe concerning the taxability of MCT constituent band members on MCT reservations of which the individual is not a band member. This means that exemption from state income taxation is now available to MCT members regardless of band affiliation. Thus, for instance, an MCT member who is a member of the Leech Lake Band who lives and works on the Fond du Lac Reservation will be exempt from state taxation.

This reverses position we announced to you on January 2, 2001, and again on August 3, 2001. In those letters, we wrote that our initial position was that the exemption from individual income tax applied only if the income was earned on the reservation of which the MCT member is also a Band member. Thus, for instance, under our initial position an MCT member who is a member of the Leech Lake Band who lived and worked on the Fond du Lac Reservation would be subject to state income

tax on the wages earned on the Fond du Lac Reservation.

Our original position was based, in no small part, on the fact that the Department of Revenue has had a long working relationship with the six bands of the MCT. As part of that relationship we have been repeatedly told that each band is a separate government with its own interests and priorities. At the same time, our contact with the MCT have been very limited.

In adopting this position, I would like to stress four points.

First, the position we are announcing here does not create any new exemption from taxation for Indians. Instead, it simply changes our interpretation of "member" of the tribe as that word is used by the courts when describing those Indians exempt from state taxation. MCT members will still be subject to tax when they live or work off an MCT band affiliated reservation. Furthermore, this position should have no impact on any of the tax agreements between the Department and the Bands, nor do we believe that it forms the basis for any need to amend those agreements.

Second, while we feel comfortable taking this position as it relates to taxes, I have no authority to bind the State to this position for any non-tax purpose. If legal questions arise in other contexts concerning the status of MCT members, you will

need to work with the appropriate state or local agencies to resolve them.

Third, we understand the importance of this issue to the Tribe and its members, particularly those few thousand members who will no longer be subject to state taxation. Nonetheless, we take this position hesitantly because there are some MCT members who will be adversely affected by it. In particular, some low and moderate income MCT members who live and work on a reservation of which they are not also a Band member will no longer be eligible for the refundable Minnesota working family or child and dependent care credits.

Finally, this decision is based on general principles of Indian law, much of which are established through court decisions, none of which have specifically addressed the status of MCT members. As a result, while we will now consider this matter closed, it is obviously subject to further review pending any future state, federal or tribal court decisions, or other changes in circumstances.

Since prior to the 2000 Minnesota Supreme Court decision in RMH, all reservation Indians were exempt from state taxation regardless of tribal affiliation, the position announced in this letter should not have any retroactive impact except for tax year 2001. MCT members impacted by this decision should file an amended return (Minnesota form M-1X) to claim a refund of tax that they may have paid.

If you or your staff, or staff at the any of the MCT bands, have questions about the position announced in this letter please contact Department of Revenue staff attorneys Susan Barry (651)282-5581) or Mark Pederson (651) 296-3246).

Individual MCT band members seeking information about how to file amended income tax returns should call our taxpayer information office at (651) 296-3781.

Sincerely,

s/ Matthew G. Smith
Matthew G. Smith
Commissioner

Cc: Mark Anderson
Senator Lawrence Pogemiller
Representative Ron Abrams

TREATY WITH THE CHIPPEWA, 1855.

Feb. 22, 1855. | 10 Stat., 1165. | Ratified Mar. 3, 1855. | Proclaimed Apr. 7, 1855.

Articles of agreement and convention made and concluded at the city of Washington, this twenty-second day of February, one thousand eight hundred and fifty-five, by George W. Manypenny, commissioner, on the part of the United States, and the following-named chiefs and delegates, representing the Mississippi bands of Chippewa Indians, viz: Pug-o-na-ke-shick, or Hole-in-the-day; Que-we-sans-ish, or Bad Boy; Wand-e-kaw, or Little Hill; I-awe-showe-we-ke-shig, or Crossing Sky; Petud-dunce, or Rat's Liver; Mun-o-min-e-kay-shein, or Rice-Maker; Mah-yah-ge-way-we-durg, or the Chorister; Kay-gwa-daush, or the Attempter; Caw-caug-e-we-goon, or Crow Feather; and Show-baush-king, or He that passes under Everything, and the following-named chiefs and delegates representing the Pillager and Lake Winnibigoshish bands of Chippewa Indians, viz: Aish-ke-bug-e-koshe, or Flat Mouth; Be-sheck-kee, or Buffalo; Nay- bun-a-caush, or Young Man's Son; Maug-e-gaw-bow, or Stepping Ahead; Mi-gi-si, or Eagle, and Kaw-be-mub-bee, or North Star, they being thereto duly authorized by the said bands of Indians respectively.

ARTICLE 1. The Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians hereby cede, sell, and convey to the United States all their right, title, and interest in, and to, the lands now owned and claimed by them, in the Territory of Minnesota, and included within the following

boundaries, viz: Beginning at a point where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, east of the Mississippi River, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven, running thence, up the said branch, to its source; thence, nearly north in a straight line, to the mouth of East Savannah River; thence, up the St. Louis River, to the mouth of East Swan River; thence, up said river, to its source; thence, in a straight line, to the most westwardly bend of Vermillion River; thence, northwestwardly, in a straight line, to the first and most considerable bend in the Big Fork River; thence, down said river, to its mouth; thence, down Rainy Lake River, to the mouth of Black River; thence, up that river, to its source; thence, in a straight line, to the northern extremity of Turtle Lake; thence, in a straight line, to the mouth of Wild Rice River; thence, up Red River of the North, to the mouth of Buffalo River; thence, in a straight line, to the southwestern extremity of Otter-Tail Lake; thence, through said lake, to the source of Leaf River; thence down said river, to its junction with Crow Wing River; thence down Crow Wing River, to its junction with the Mississippi River; thence to the commencement on said river of the southern boundary-line of the Chippewa country, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven; and thence, along said line, to the place of beginning. And the said Indians do further fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they may now have in, and to

any other lands in the Territory of Minnesota or elsewhere.

ARTICLE 2. There shall be, and hereby is, reserved and set apart, a sufficient quantity of land for the permanent homes of the said Indians; the lands so reserved and set apart, to be in separate tracts, as follows, viz:

For the Mississippi bands of Chippewa Indians: The first to embrace the following fractional townships, viz: forty-two north, of range twenty-five west; forty-two north, of range twenty-six west; and forty-two and forty-three north, of range twenty-seven west; and, also, the three islands in the southern part of Mille Lac. Second, beginning at a point half a mile east of Rabbit Lake; thence south three miles; thence westwardly, in a straight line, to a point three miles south of the mouth of Rabbit River; thence north to the mouth of said river; thence up the Mississippi River to a point directly north of the place of beginning; thence south to the place of beginning. Third, beginning at a point half a mile southwest from the most southwestwardly point of Gull Lake; thence due south to Crow Wing River; thence down said river, to the Mississippi River; thence up said river to Long Lake Portage; thence, in a straight line, to the head of Gull Lake; thence in a southwestwardly direction, as nearly in a direct line as practicable, but at no point thereof, at a less distance than half a mile from said lake, to the place of beginning. Fourth, the boundaries to be, as nearly as practicable, at right angles, and so as to embrace within them Pokagomon Lake; but nowhere to approach nearer said lake than half a mile

therefrom. Fifth, beginning at the mouth of Sandy Lake River; thence south, to a point on an east and west line, two miles south of the most southern point of Sandy Lake; thence east, to a point due south from the mouth of West Savannah River; thence north, to the mouth of said river; thence north to a point on an east and west line, one mile north of the most northern point of Sandy Lake; thence west, to Little Rice River; thence down said river to Sandy Lake River; and thence down said river to the place of beginning. Sixth, to include all the islands in Rice Lake, and also half a section of land on said lake, to include the present gardens of the Indians. Seventh, one section of land for Pug-o-na-ke-shick, or Hole-in-the-day, to include his house and farm; and for which he shall receive a patent in fee-simple.

For the Pillager and Lake Winnibigoshish bands, to be in three tracts, to be located and bounded as follows, viz: First, beginning at mouth of Little Boy River; thence up said river to Lake Hassler; thence through the center of said lake to its western extremity; thence in a direct line to the most southern point of Leech Lake; and thence through said lake, so as to include all the islands therein, to the place of beginning. Second, beginning at the point where the Mississippi River leaves Lake Winnibigoshish; thence north, to the head of the first river; thence west, by the head of the next river, to the head of the third river, emptying into said lake; thence down the latter to said lake; and thence in a direct line to the place of beginning. Third, beginning at the mouth of Turtle River; thence up said river to the first lake; thence east, four miles; thence southwardly, in a line parallel with Turtle River, to

Cass Lake; and thence, so as to include all the islands in said lake, to the place of beginning; all of which said tracts shall be distinctly designated on the plats of the public surveys.

And at such time or times as the President may deem it advisable for the interests and welfare of said Indians, or any of them, he shall cause the said reservation, or such portion or portions thereof as may be necessary, to be surveyed; and assign to each head of a family, or single person over twenty-one years of age, a reasonable quantity of land, in one body, not to exceed eighty acres in any case, for his or their separate use; and he may, at his discretion, as the occupants thereof become capable of managing their business and affairs, issue patents to them for the tracts so assigned to them, respectively; said tracts to be exempt from taxation, levy, sale, or feiture; and not to be aliened or leased for a longer period than two years, at one time, until otherwise provided by the legislature of the State in which they may be situate, with the assent of Congress. They shall not be sold, or alienated, in fee, for a period of five years after the date of the patents; and not then without the assent of the President of the United States being first obtained. Prior to the issue of the patents, the President shall make such rules and regulations as he may deem necessary and expedient, respecting the disposition of any of said tracts in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased person; and should any of the Indians to whom tracts may be assigned thereafter abandon them, the President may make such rules and regulations, in relation to

such abandoned tracts, as in his judgment may be necessary and proper.

ARTICLE 3. In consideration of, and in full compensation for, the cessions made by the said Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians, in the first article of this agreement, the United States hereby agree and stipulate to pay, expend, and make provision for, the said bands of Indians, as follows, viz: For the Mississippi bands:

Ten thousand dollars ($10,000) in goods, and other useful articles, as soon as practicable after the ratification of this instrument, and after an appropriation shall be made by Congress therefore, to be turned over to the delegates and chiefs for distribution among their people.

Fifty thousand dollars ($50,000) to enable them to adjust and settle their present engagements, so far as the same, on an examination thereof, may be found and decided to be valid and just by the chiefs, subject to the approval of the Secretary of the Interior; and any balance remaining of said sum not required for the above-mentioned purpose shall be paid over to said Indians in the same manner as their annuity money, and in such installments as the said Secretary may determine; Provided, That an amount not exceeding ten thousand dollars ($10,000) of the above sum shall be paid to such full and mixed bloods as the chiefs may direct, for services rendered heretofore to their bands.

Twenty thousand dollars ($20,000) per annum, in money, for twenty years, provided, that two

thousand dollars ($2,000) per annum of that sum, shall be paid or expended, as the chiefs may request, for purposes of utility connected with the improvement and welfare of said Indians, subject to the approval of the Secretary of the Interior.

Five thousand dollars ($5,000) for the construction of a road from the mouth of Rum River to Mille Lac, to be expended under the direction of the Commissioner of Indian Affairs.

A reasonable quantity of land, to be determined by the Commissioner of Indian Affairs, to be ploughed and prepared for cultivation in suitable fields, at each of the reservations of the said bands, not exceeding, in the aggregate, three hundred acres for all the reservations, the Indians to make the rails and inclose the fields themselves.

For the Pillager and Lake Winnibigoshish bands:

Ten thousand dollars ($10,000) in goods, and other useful articles, as soon as practicable, after the ratification of this agreement, and an appropriation shall be made by Congress therefore; to be turned over to the chiefs and delegates for distribution among their people.

Forty thousand dollars ($40,000) to enable them to adjust and settle their present engagements, so far as the same, on an examination thereof, may be found and decided to be valid and just by the chiefs, subject to the approval of the Secretary of the Interior; and any balance remaining of said sum, not required for that purpose, shall be paid over to said Indians, in the same manner as their annuity

money, and in such installments as the said Secretary may determine; provided that an amount, not exceeding ten thousand dollars ($10,000) of the above sum, shall be paid to such mixed-bloods as the chiefs may direct, for services heretofore rendered to their bands.

Ten thousand six hundred and sixty-six dollars and sixty-six cents ($10,666.66) per annum, in money, for thirty years.

Eight thousand dollars ($8,000) per annum, for thirty years, in such goods as may be requested by the chiefs, and as may be suitable for the Indians, according to their condition and circumstances.

Four thousand dollars ($4,000) per annum, for thirty years, to be paid or expended, as the chiefs may request, for purposes of utility connected with the improvement and welfare of said Indians; subject to the approval of the Secretary of the Interior: Provided, That an amount not exceeding two thousand dollars thereof, shall, for a limited number of years, be expended under the direction of the Commissioner of Indian Affairs, for provisions, seeds, and such other articles or things as may be useful in agricultural pursuits.

Such sum as can be usefully and beneficially applied by the United States, annually, for twenty years, and not to exceed three thousand dollars, in any one year, for purposes of education; to be expended under the direction of the Secretary of the Interior.

Three hundred dollars' ($300) worth of powder, per annum, for five years.

One hundred dollars' ($100) worth shot and lead, per annum, for five years.

One hundred dollars' ($100) worth of galling twine, per annum, for five years.

One hundred dollars' ($100) worth of tobacco, per annum, for five years.

Hire of three laborers at Leech Lake, of two at Lake Winnibigoshish, and of one at Cass Lake, for five years.

Expense of two blacksmiths, with the necessary shop, iron, steel, and tools, for fifteen years.

Two hundred dollars ($200) in grubbing-hoes and tools, the present year.

Fifteen thousand dollars ($15,000) for opening a road from Crow Wing to Leech Lake; to be expended under the direction of the Commissioner of Indian Affairs.

To have ploughed and prepared for cultivation, two hundred acres of land, in ten or more lots, within the reservation at Leech Lake; fifty acres, in four or more lots, within the reservation at Lake Winnibigoshish; and twenty-five acres, in two or more lots within the reservation at Cass Lake: Provided, That the Indians shall make the rails and inclose the lots themselves.

A saw-mill, with a portable grist-mill attached thereto, to be established whenever the same shall be deemed necessary and advisable by the Commissioner of Indian Affairs, at such point as he

shall think best; and which, together, with the expense of a proper person to take charge of and operate them, shall be continued during ten years: Provided, That the cost of all the requisite repairs of the said mills shall be paid by the Indians, out of their own funds.

ARTICLE 4. The Mississippi bands have expressed a desire to be permitted to employ their own farmers, mechanics, and teachers; and it is therefore agreed that the amounts to which they are now entitled, under former treaties, for purposes of education, for blacksmiths and assistants, shops, tools, iron and steel, and for the employment of farmers and carpenters, shall be paid over to them as their annuities are paid: Provided, however, That whenever, in the opinion of the Commissioner of Indian Affairs, they fail to make proper provision for the above-named purposes, he may retain said amounts, and appropriate them according to his discretion, for their education and improvement.

ARTICLE 5. The foregoing annuities, in money and goods, shall be paid and distributed as follows: Those due the Mississippi bands, at one of their reservations; and those due the Pillager and Lake Winnibigoshish bands, at Leech Lake; and no part of the said annuities shall ever be taken or applied, in any manner, to or for the payment of the debts or obligations of Indians contracted in their private dealings, as individuals, whether to traders or other persons. And should any of said Indians become intemperate or abandoned, and waste their property, the President may withhold any moneys or goods, due and payable to such, and cause the same to be

expended, applied, or distributed, so as to insure the benefit thereof to their families. If, at any time, before the said annuities in money and goods of either of the Indian parties to this convention shall expire, the interests and welfare of said Indians shall, in the opinion of the President, require a different arrangement, he shall have the power to cause the said annuities, instead of being paid over and distributed to the Indians, to be expended or applied to such purposes or objects as may be best calculated to promote their improvement and civilization.

ARTICLE 6. The missionaries and such other persons as are now, by authority of law, residing in the country ceded by the first article of this agreement, shall each have the privilege of entering one hundred and sixty acres of the said ceded lands, at one dollar and twenty-five cents per acre; said entries not to be made so as to interfere, in any manner, with the laying off of the several reservations herein provided for.

And such of the mixed bloods as are heads of families, and now have actual residences and improvements in the ceded country, shall have granted to them, in fee, eighty acres of land, to include their respective improvements.

ARTICLE 7. The laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within the several reservations provided for herein; and those portions of said laws which prohibit the introduction, manufacture, use of, and

traffic in, ardent spirits, wines, or other liquors, in the Indian country, shall continue and be in force, within the entire boundaries of the country herein ceded to the United States, until otherwise provided by Congress.

ARTICLE 8. All roads and highways, authorized by law, the lines of which shall be laid through any of the reservations provided for in this convention, shall have the right of way through the same; the fair and just value of such right being paid to the Indians therefore; to be assessed and determined according to the laws in force for the appropriation of lands for such purposes.

ARTICLE 9. The said bands of Indians, jointly and severally, obligate and bind themselves not to commit any depredations or wrong upon other Indians, or upon citizens of the United States; to conduct themselves at all times in a peaceable and orderly manner; to submit all difficulties between them and other Indians to the President, and to abide by his decision in regard to the same, and to respect and observe the laws of the United States, so far as the same are to them applicable. And they also stipulate that they will settle down in the peaceful pursuits of life, commence the cultivation of the soil, and appropriate their means to the erection of houses, opening farms, the education of their children, and such other objects of improvement and convenience, as are incident to well-regulated society; and that they will abstain from the use of intoxicating drinks and other vices to which they have been addicted.

ARTICLE 10. This instrument shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and the Senate of the United States.

In testimony whereof the said George W. Manypenny, commissioner as aforesaid, and the said chiefs and delegates of the Mississippi, Pillager and Lake Winnibigoshish bands of Chippewa Indians have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

George W. Manypenny, commissioner. [L. S.]

Tug-o-na-ke-shick, or Hole in the Day, his x mark. [L. S.]

Que-we-sans-ish, or Bad Boy, his x mark. [L. S.]

Waud-e-kaw, or Little Hill, his x mark. [L. S.]

I-awe-showe-we-ke-shig, or Crossing Sky, his x mark. [L. S.]

Petud-dunce, or Rat's Liver, his x mark. [L. S.]

Mun-o-min-e-kay-shein, or Rice Maker, his x mark. [L. S.]

Aish-ke-bug-e-koshe, or Flat Mouth, his x mark. [L. S.]

Be-sheck-kee, or Buffalo, his x mark. [L. S.]

Nay-bun-a-caush; or Young Man's Son, his x mark. [L. S.]

Mah-yah-ge-way-we-durg, or The Chorister, his x mark. [L. S.]

Kay-gwa-daush, or The Attempter, his x mark. [L. S.]

Caw-cang-e-we-gwan, or Crow Feather, his x mark. [L. S.]

Show-baush-king, or He that Passeth Under Everything, his x mark. [L. S.]

Chief delegates of the Mississippi bands.

Maug-e-gaw-bow, or Stepping Ahead, his x mark. [L. S.]

Mi-gi-si, or Eagle, his x mark. [L. S.]

Kaw-be-mub-bee, or North Star, his x mark. [L. S.]

Chiefs and delegates of the Pillager and Lake Winnibigoshish bands.

Executed in the presence of—

Henry M. Rice.

Geo. Culver.

D. B. Herriman, Indian agent.

J. E. Fletcher.

John Dowling.

T. A. Warren, United States interpreter.

Paul H. Beaulieu, interpreter.

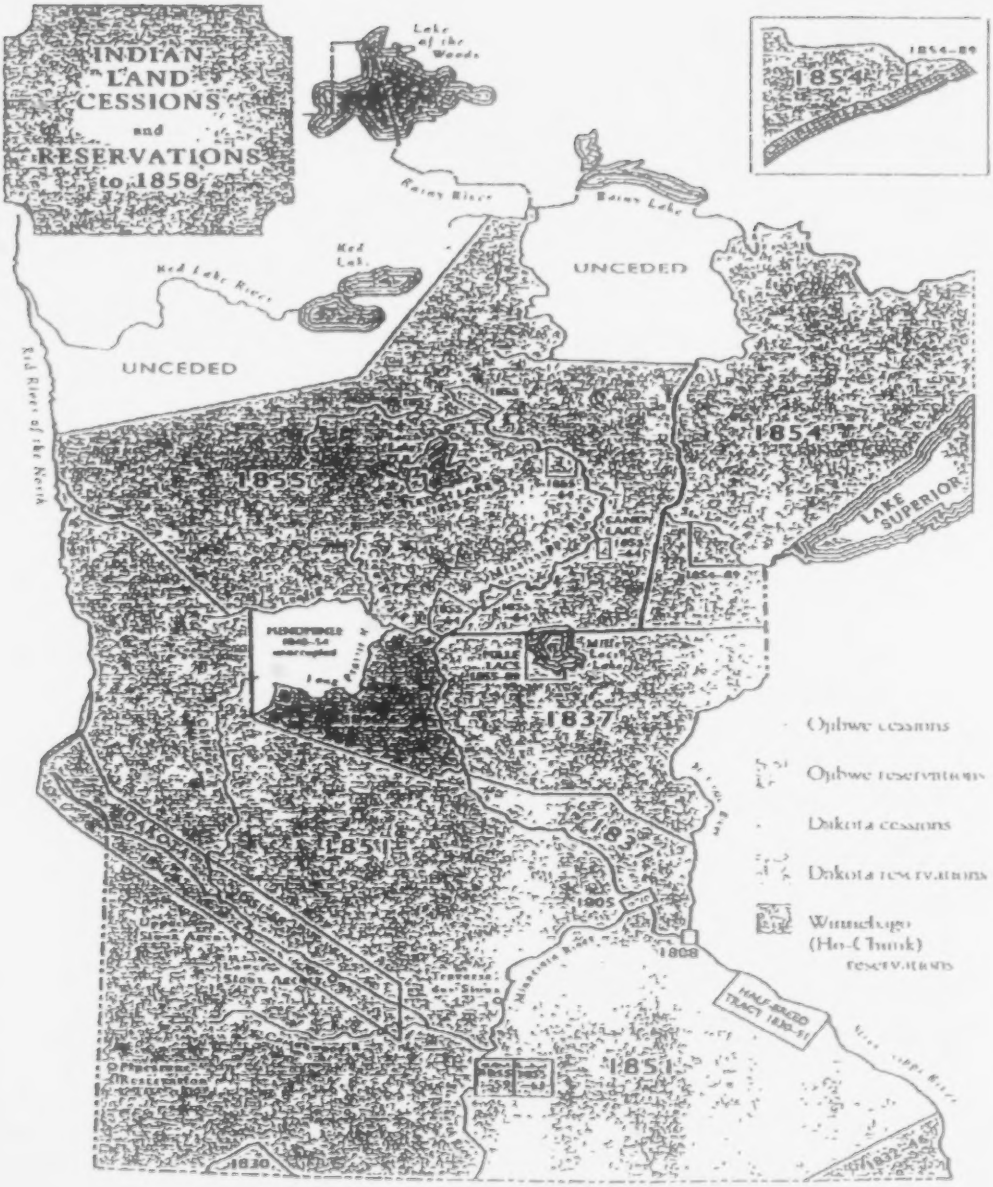
Edward Ashman, interpreter.

C. H. Beaulieu, interpreter.

Peter Roy, interpreter.

Will P. Ross, Cherokee Nation.

Riley Keys.


INDIAN LAND CESSIONS and RESERVATIONS to 1858
Lake of the Woods
Rainy River
Rainy Lake
Red Lake
Red Lake River
UNCEDED
UNCEDED
Red River of the North
1855
1854
LAKE SUPERIOR
1837
1851
1842
1805
1808
1854-59
Ojibwe cessions
Ojibwe reservations
Dakota cessions
Dakota reservations
Winnebago (Ho-Chunk) reservations

STATE OF MINNESOTA

IN SUPREME COURT

C0-99-559

Court of Appeals

Anderson, Paul H., J.
Dissenting, Stringer, J.,
Page, J., & Anderson,
Russell, J.

State of Minnesota,
petitioner,

Appellant,

vs.

R.M.H.,

Respondent.

Filed: August 24, 2000
Office of Appellate Courts

S Y L L A B U S

Public Law 280, 18 U.S.C. § 1162(a) (1998), does not expressly grant Minnesota jurisdiction to prosecute an Indian who drives without a license and speeds while on the reservation of an Indian tribe of which he is not a member because driving without a license and speeding are civil/regulatory offenses that do not fit within the ambit of Pub. L. 280.

Minnesota's authority to exercise its jurisdiction over civil/regulatory traffic offenses committed on a state highway on an Indian reservation by an Indian who is not an enrolled member of the governing tribe arises from Minnesota's interest in regulating the safe flow of traffic on its state-operated and maintained highways and is not preempted by the federal interest in tribal self-government, self-sufficiency, and economic development.

Reversed and remanded.

Heard, considered, and decided by the court en banc.

OPINION

ANDERSON, Paul H., Justice.

The issue before us is whether the State of Minnesota has jurisdiction to enforce its speeding and driver's license laws against an Indian who commits these offenses on a state highway located on the reservation of a tribe of which the Indian is not an enrolled member. The district court concluded that Minnesota does have jurisdiction over an Indian who is not an enrolled member of the tribe on whose reservation the offenses occurred. The Minnesota Court of Appeals reversed, concluding that federal law does not distinguish between tribes and reservations in granting a state jurisdiction over offenses committed on an Indian reservation. We reverse the court of appeals.

On October 29, 1998, R.M.H., then 15 years old, drove a motor vehicle on a state highway within the

boundaries of the reservation of the White Earth Band of Chippewa Indians. A Becker County police officer stopped R.M.H. for driving 14 miles per hour in excess of the posted 50 mile-per-hour speed limit. After the stop, the officer gave R.M.H. a citation for violating Minn. Stat. § 169.14 (1998) (speeding) and Minn. Stat. § 171.02 (1998) (driving without a license). [1]

R.M.H. appeared in Becker County District Court on February 24, 1999, for both offenses. During that appearance, R.M.H. stipulated that he was driving 14 miles per hour in excess of the speed limit and was driving without a valid driver's license. [2] R.M.H. and the state then stipulated that R.M.H. was not an enrolled member of the White Earth Band, although his mother is a member of the band. [3] Finally, they stipulated that R.M.H. is an enrolled member of the Forest County Potawatomi Community in Crandon, Wisconsin and that the offenses occurred within the boundaries of the White Earth Reservation.

Following the district court's acceptance of this stipulation, R.M.H. moved the court to dismiss the charges against him on jurisdictional grounds. R.M.H. argued that under Pub. L. 280, 18 U.S.C. § 1162(a) (1998), and this court's decision in *State v. Stone*, 572 N.W.2d 725 (Minn. 1997), Minnesota did not have jurisdiction over these traffic offenses. More specifically, R.M.H. argued that the state lacked jurisdiction because he is an Indian for the purposes of federal law, the offenses occurred in "Indian country," and the offenses were civil/regulatory. The

state disagreed, arguing that neither Pub. L. 280 nor *Stone* applies here because R.M.H. is not an enrolled member of the White Earth Band. The district court agreed with the state, concluding that R.M.H. was subject to state jurisdiction. The court then denied R.M.H.'s motion to dismiss, found him guilty of the cited offenses, and ordered him to pay fines and surcharges totaling $167.50.

The court of appeals reversed the district court, concluding that Pub. L. 280, which grants Minnesota jurisdiction over Indians in Indian country, does not differentiate between tribes or reservations. *See State v. R.M.H.*, 602 N.W.2d 411, 412 (Minn. App. 1999). In reaching this conclusion, the court of appeals cited our decision in *Topash v. Commissioner of Revenue*, 291 N.W.2d 679, 682 (Minn. 1980). More specifically, the court of appeals stated that, in *Topash*, this court "recognized, in a different context, that Public Law 280 makes no distinctions among Indians of various tribes." *R.M.H.*, 602 N.W.2d at 412 (citing *Topash*, 291 N.W.2d at 682). The court of appeals then held that, under *Stone*, the state lacked subject matter jurisdiction over R.M.H.'s traffic offenses. *See R.M.H.*, 602 N.W.2d at 413. On appeal to this court, the state challenges the court of appeals' holding that Minnesota lacked subject matter jurisdiction over R.M.H.'s offenses.

I.

We review issues of jurisdiction de novo. *See Minnesota Ctr. for Envtl. Advocacy v. Metropolitan Council*, 587 N.W.2d 838, 842 (Minn. 1999). State

jurisdiction over Indians is governed by federal statutes or case law. *See Stone*, 572 N.W.2d at 728; *see also National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 855-56 (1985). The United States Supreme Court has approved an analytical framework for determining whether state law applies to an Indian in Indian country. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 210 (1987) ("public policy test" superceded by Indian Gaming Regulatory Act 25 U.S.C. §§ 2701-2721 (1988) with respect to Class III gaming, *see generally United States v. E.C. Invs., Inc.*, 77 F.3d 327 (9th Cir. 1996)). Under this framework, state law does not generally apply to tribal Indians on their reservation absent express consent from Congress. *See id.* at 207. However, even absent such express consent, a state may exercise its authority if the operation of federal law does not preempt it from doing so. *See id.* at 215.

In *State v. Stone*, we resolved an issue similar to the one we face here. 572 N.W.2d 725 (Minn. 1997). Therefore, the same analytical framework that we applied in *Stone* is appropriate here. In *Stone*, the state charged enrolled members of the White Earth Band with violating state traffic laws while on their reservation and the band members contested state jurisdiction over their offenses. *Id.* at 728. In order to determine whether Congress had expressly consented to state jurisdiction, we first examined Pub. L. 280, which expressly grants Minnesota broad criminal and limited civil jurisdiction over specified areas of Indian country. 18 U.S.C. § 1162(a); *see also Cabazon*, 480 U.S. at 207. We held that Pub. L. 280

did not expressly grant Minnesota jurisdiction because we determined that the charged offenses were civil/regulatory rather than criminal in nature. *See Stone*, 572 N.W.2d at 731. Recognizing that "[t]he Supreme Court has not established a per se rule prohibiting the exercise of state jurisdiction * * * in the absence of an express congressional grant of jurisdiction," we then addressed whether exceptional circumstances existed so that Minnesota could nonetheless exercise jurisdiction. *See id.* at 731-32. We ultimately concluded that the state lacked jurisdiction over the offenses committed by these enrolled members of the White Earth Band. *See id.*

In this case, we are presented with the question of whether the same legal principles that barred state jurisdiction in *Stone* apply where the offender is an Indian, but is not an enrolled member of the governing tribe. Here, as in *Stone*, we first must look to Pub. L. 280 to determine whether Congress has expressly consented to Minnesota's jurisdiction over R.M.H.'s traffic offenses. In the absence of such express consent, we then would have to determine whether federal law preempts state jurisdiction.

Public Law 280 grants Minnesota jurisdiction over offenses "committed by or against Indians in the areas of Indian country" within Minnesota, except on the Red Lake Indian Reservation. 18 U.S.C. § 1162(a). [4] This grant of jurisdiction was intended to combat the problem of lawlessness on reservations and a lack of tribal law enforcement. *See Bryan v. Itasca County*, 426 U.S. 373, 379 (1976). The

Supreme Court defined the parameters of Pub. L. 280 in *Cabazon* when it held that Pub. L. 280 grants states "broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State." *Cabazon*, 480 U.S. at 207. The Court then approved the Ninth Circuit's conclusion that a state statute is "criminal/prohibitory," and therefore within Pub. L. 280's grant of jurisdiction, if the statute is generally intended to prohibit certain conduct. *Id.* at 209 (citing *Barona Group of Capitan Grande Band of Mission Indians v. Duffy*, 694 F.2d 1185 (9th Cir. 1982)). Conversely, the Court held that a statute does not fall within Pub. L. 280's grant of jurisdiction if it generally permits the conduct at issue, subject to regulation. *See Cabazon*, 480 U.S. at 209. In the latter case, the statute is properly classified as "civil/regulatory" and Pub. L. 280 does not expressly grant the state jurisdiction to enforce the statute on an Indian reservation. *Cabazon*, 480 U.S. at 209 (quoting *Barona*, 694 F.2d at 1185).

We specifically addressed Pub. L. 280's scope with respect to certain traffic laws in *Stone*, 572 N.W.2d at 725. There, we characterized the laws at issue, which included driving without a valid driver's license and speeding, as civil/regulatory. *See id.* at 728, 731. Accordingly, we concluded that, under Pub. L. 280, Minnesota did not have authority to enforce its civil/regulatory traffic laws that occurred on the White Earth Reservation against enrolled members of the White Earth Band. *See Stone*, 572 N.W.2d at 732. Further, we concluded that exceptional circumstances did not exist to warrant state

jurisdiction over a tribal member absent an express federal grant. *See id.* Therefore, we held that the state lacked jurisdiction over the offenses. *See id.*

Citing *Stone*, R.M.H. argues that Minnesota does not have jurisdiction over his traffic offenses because they are civil/regulatory. The state argues that R.M.H.'s offenses do not fit within the ambit of Pub. L. 280. Rather than focusing on the nature of R.M.H.'s offenses, the state argues that Pub. L. 280 does not apply to R.M.H. because he is not an "Indian" for the purposes of federal law. Consequently, while R.M.H. and the state focus on different aspects of Pub. L. 280, they both argue that this federal statute does not expressly grant Minnesota jurisdiction over R.M.H.'s offenses. We agree with this conclusion, which is consistent with our decision in *Stone*. Therefore, we hold that R.M.H.'s driving without a license and speeding offenses are civil/regulatory and do not fit within Pub. L. 280's express grant of jurisdiction to Minnesota. [5] *See Stone*, 572 N.W.2d at 731. Because we reach this result under our holding in *Stone*, it is not necessary for us to address the state's argument that R.M.H. is not an "Indian" for the purposes of Pub. L. 280.

II.

Having concluded that Pub. L. 280 does not grant Minnesota jurisdiction over R.M.H.'s traffic offenses, we turn to the next part of our analysis. Here, as in *Stone*, we must consider whether, absent express consent, Minnesota nonetheless may exercise its jurisdiction over R.M.H.'s offenses. As previously

noted, a state may exercise jurisdiction on a tribal reservation absent express federal consent if the operation of federal law does not preempt it from doing so. *See Cabazon*, 480 U.S. at 215. Therefore, we must consider whether federal law preempts Minnesota from exercising jurisdiction over R.M.H.'s traffic offenses which were committed on a state highway located on the White Earth Reservation.

A state may be preempted by federal law from exercising jurisdiction over activity undertaken on a reservation or by tribal members. *See id.* at 216. "State jurisdiction is pre-empted * * * if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983). Although Indian tribes still possess "attributes of sovereignty over both their members and their territory[,]" *United States v. Wheeler*, 435 U.S. 313, 323 (1978) (superceded by Indian Civil Rights Act 25 U.S.C. §§ 1301-03 (1983 & Supp. 1998) as to inherent power of Indian tribes to exercise criminal jurisdiction over all Indians, *see United States v. Weaselhead*, 156 F.3d 818, 823 (8th Cir. 1998)) (quoting *United States v. Mazurie*, 419 U.S. 544, 557 (1975)), this right of tribal self-government is ultimately subject to the broad power of Congress. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980).

The Supreme Court stated in *Cabazon* that "`under certain circumstances a State may validly assert authority over the activities of nonmembers on a

reservation, and . . . in exceptional circumstances, a State may assert jurisdiction over the on-reservation activities of tribal members.'" 408 U.S. at 215 (quoting *Mescalero*, 462 U.S. at 331-32). In *Stone*, we held that such "exceptional circumstances" were not present when Minnesota sought to exercise its jurisdiction over civil/regulatory traffic offenses committed on a tribal reservation by enrolled members of the governing tribe. *See Stone*, 572 N.W.2d at 732. Because a state's jurisdictional relationship to a person on a tribal reservation varies depending on whether that person is an enrolled member of the tribe, we must first ascertain R.M.H.'s status in relation to the White Earth Band by examining relevant federal authority. [6]

At this point, it is important to reiterate that it is undisputed that R.M.H. is not an enrolled member of the White Earth Band. Although R.M.H. may be eligible for membership with the White Earth Band because his mother is an enrolled member, this is not an issue here. R.M.H. stipulated that at the time of the offenses he was not an enrolled member of the White Earth Band. Therefore, for the purposes of our review, R.M.H. is a nonmember Indian; that is to say, he is an Indian who is not an enrolled member of the governing tribe—the White Earth Band—on whose reservation his traffic offenses occurred. [7]

Tribal sovereignty is "dependent on, and subordinate to, only the Federal Government, not the States." *Cabazon*, 480 U.S. at 207 (quoting *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 154 (1980)). Therefore, in order to

ascertain the scope of tribal sovereignty in a given situation, federal case law controls. *See National Farmers*, 471 U.S. at 855-56. This conclusion mandates that we look to a series of Supreme Court cases under which the Court has provided a framework for understanding and applying the concept of Indian sovereignty as it relates to nonmember Indians. *See Duro v. Reina*, 495 U.S. 676, 684-85 (1990) (stating that *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), and *Wheeler*, 435 U.S. at 313, as well as subsequent cases provide the analytic framework for resolution of the issue of whether sovereignty retained by tribes in their independent status within our scheme of government includes the power of criminal jurisdiction over nonmembers). Analysis of these cases reveals that Indian sovereignty is at its strongest in the context of self-governance, that is, authority over members of the governing tribe. In contrast, the strength of Indian sovereignty is less with respect to authority over nonmembers of the governing tribe, including nonmember Indians.

In *Oliphant*, the Supreme Court discussed the general nature of Indian sovereignty in the context of determining whether Indian tribal courts have criminal jurisdiction over non-Indians. 435 U.S. 191, 206 (1978). The Court described Indian tribes as being "quasi-sovereign" by virtue of their incorporation into the United States. *See id.* at 208-09 (citing *Cherokee Nation v. Georgia*, 5 Pet. 1, 15 (1831)). The Court later described this retained sovereignty as that needed to control and to preserve a tribe's own internal relations, customs, and social

order. *See Duro*, 495 U.S. at 685-86. As a result of this limitation on tribal sovereignty, the Court reasoned that Indian tribes do not retain the power to try non-Indian citizens of the United States, except to the extent allowed by Congress. *See id.* at 211.

The Supreme Court next interpreted and applied its reasoning and holding in *Oliphant* in *Wheeler*, 435 U.S. at 313. The Court stated in *Wheeler* that Indian sovereignty "exists only at the sufferance of Congress and is subject to complete defeasance." *Id.* at 323. Therefore, Indian tribes only "possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status." *Id.* In *Wheeler*, the Court further explained that limitations on jurisdiction

> rest on the fact that the dependent status of Indian tribes within our territorial jurisdiction is necessarily inconsistent with their freedom independently to determine their external relations. But the powers of self-government, including the power to prescribe and enforce internal criminal laws, are of a different type. *They involve only the relations among members of a tribe.* Thus, they are not such powers as would necessarily be lost by virtue of a tribe's dependent status.

Id. at 326 (emphasis added).

The Court subsequently applied *Oliphant* in the context of nonmember Indians when it addressed whether a tribe could prohibit hunting and fishing by nonmembers of the tribe on reservation land

owned by non-Indians. *See Montana v. United States*, 450 U.S. 544, 565 (1981). In *Montana*, the Court stated that "[t]hough *Oliphant* only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana*, 450 U.S. at 565 (footnote omitted). The Court therefore concluded that a tribe also retained authority over conduct of non-Indians if that conduct threatens or directly affects the political integrity, economic security, or health or welfare of the tribe. *See id.* at 566 (citing *Fisher v. District Court*, 424 U.S. 382, 386 (1976)). Because such interests were not implicated under the facts before it in *Montana*, the Court held that the tribe did not have jurisdiction to regulate hunting or fishing on reservation land owned by nonmembers of the tribe. *See id.* at 566-67.

The Supreme Court again addressed Indian tribal jurisdiction when it considered whether the State of Washington could tax purchases on a reservation by Indians who are not members of the governing tribe. *See Colville*, 447 U.S. at 152. [8] The Court concluded that the mere fact that a nonmember of the governing tribe comes within the definition of an Indian does not exempt that Indian from state taxing jurisdiction. *See id.* at 161. The Court said:

Federal statutes, even given the broadest reading to which they are reasonably susceptible, cannot be said to pre-empt Washington's power to impose its taxes on Indians not members of the Tribe. * * *

[T]he mere fact that nonmembers resident on the reservation come within the definition of "Indian" for purposes of the Indian Reorganization Act of 1934, * * * does not demonstrate a congressional intent to exempt such Indians from state taxation. Nor would the imposition of Washington's tax on these purchasers contravene the principle of tribal self-government, for the simple reason that nonmembers are not constituents of the governing Tribe. *For most practical purposes those Indians stand on the same footing as non-Indians resident on the reservation.*

Id. at 160-61 (emphasis added). The Court concluded that "[f]ederal statutes, even given the broadest reading to which they are reasonably susceptible, cannot be said to pre-empt [a state's] power to impose its taxes on Indians not members of the Tribe." *Id.* at 160. Accordingly, the Court held that the state's interest in taxing nonmember Indians' purchases outweighed any tribal interest. *See id.*

The Supreme Court in *Oliphant* and its progeny framed Indian jurisdiction over other Indians in terms of a tribe's retained power of self-governance over its own tribal members. *See, e.g., Montana*, 450 U.S. at 565; *Colville*, 447 U.S. at 161. Conversely, the Court has held that by nature of its dependent status, a tribe does not retain inherent sovereign powers over nonmembers of the tribe. *See Montana*, 450 U.S. at 565. The court has stated that "[T]ribes are not mere fungible groups of homogenous persons among whom any Indian would feel at home." *Duro*, 495 U.S. at 695. Further, the Court stated in *Colville*

that nonmember Indians who reside on a tribal reservation are, for practical purposes, the same as non-Indians. 447 U.S. at 161.

We therefore conclude that, when comparing federal and state interests to determine whether federal law preempts Minnesota's jurisdiction over R.M.H., regulation of nonmember Indians warrants different consideration than does regulation of member Indians. More specifically, R.M.H., as a nonmember Indian, is not entitled to the same insulation from state government authority on the White Earth Reservation as are enrolled members of the White Earth Band because the White Earth Band's sovereign interest is not as strongly implicated as it would be with an enrolled member. Further, because R.M.H. is a nonmember Indian, Minnesota is less likely to be preempted from exercising its authority over his traffic offenses than over the same offenses committed by an enrolled member of the White Earth Band. *See Cabazon*, 480 U.S. at 214-15; *see also, e.g., Wheeler*, 435 U.S. at 323 ("Indian tribes still possess those aspects of sovereignty not withdrawn * * * by implication as a necessary result of their dependent status.").

Our analysis rests heavily on the status of R.M.H. as a nonmember Indian. R.M.H. sought to overcome this distinction by relying on our decision in *Topash v. Commissioner of Revenue*, 291 N.W.2d 679 (Minn. 1980). More specifically, R.M.H. asserts that because he is a member of a federally recognized tribe—the Forest County Potawatomi Community—he is an Indian who is entitled to the same insulation from

state government authority as a member of the White Earth Band. Essentially, he argues that he is an "Indian" for the purposes of federal law because under our decision in *Topash*, the term "Indian" does not distinguish between tribes. 291 N.W.2d at 682. We now note, however, that the precedential value of this part of our decision in *Topash* has been negated by the line of Supreme Court decisions beginning with *Oliphant*.

In *Topash*, we considered whether Minnesota had authority to collect income tax from a nonmember Indian who was living and working on the Red Lake Indian Reservation. *Id.* at 680. In reaching our decision, we looked to Pub. L. 280 as a point of reference and noted that it refers to "Indians" without distinguishing between tribes and was intended to "protect Indians, of whatever tribe, from state government interference * * *." *Topash*, 291 N.W.2d at 682-83. We then held that federal Indian jurisdiction includes all Indians regardless of their membership status and therefore preempts state jurisdiction to tax a nonmember Indian. *See id.*

Our conclusion in *Topash* that Indian jurisdiction includes Indians of all tribes conflicts with how the Supreme Court has defined Indian sovereignty in *Oliphant* and its progeny, which cases lead to a distinction between nonmember Indians and Indians who are members of the tribe on whose reservation they reside. Our reasoning in *Topash* is specifically refuted by the Supreme Court's decision in *Colville*, where the Court reached the opposite result. *See Colville*, 447 U.S. at 161. Because Supreme Court

cases conflict with part of our decision in *Topash*, we conclude that *Topash* is no longer controlling on this issue.

We next proceed to compare federal and state interests to determine whether state law conflicts with federal interests so that federal law preempts Minnesota's jurisdiction over R.M.H.'s traffic offenses. When we do so, we must continue to bear in mind our earlier conclusion that, as a nonmember Indian, R.M.H. is not entitled to the same insulation from state government authority on the White Earth Reservation as are enrolled members of the White Earth Band.

Because of the unique nature of tribal sovereignty, our inquiry into whether federal law preempts state law "is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but [calls] for a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in [this] specific context, the exercise of state authority would violate federal law." *Bracker*, 448 U.S. at 145. Further, in this area of the law, a preemption analysis rests "principally on a consideration of the nature of the competing interests at stake" and rejects "a narrow focus on congressional intent to preempt state law as the sole touchstone." *Mescalero*, 462 U.S. at 334.

The Supreme Court has stated that the goals of tribal self-government, self-sufficiency, and economic development are overriding goals. *Cabazon*, 480 U.S. at 216; *see also Mescalero*, 462 U.S. at 344. These

goals reflect an interest in protecting a tribe's retained sovereignty over its members and its territory. *See Bracker*, 448 U.S. at 142. Accordingly, the Court has emphasized that "there is a significant geographical component to tribal sovereignty" and has "consistently guarded the authority of Indian governments over their reservations." *Id.* at 151 (quotations omitted). The Court also has held that state law may be preempted if it relates to an area that is so pervasively regulated by the federal government that state regulation would obstruct federal policies. *See id.* at 148. Therefore, we must focus on the specific factual context in which this case comes before us and then weigh the competing interests at stake. Here, we are presented with a nonmember of the White Earth Band who committed civil/regulatory traffic offenses on a state-operated and maintained highway located within the boundaries of the White Earth Reservation.

Using these specific facts, we first determine whether state jurisdiction over R.M.H. threatens the federal interest in encouraging tribal self-government. Supreme Court cases suggest that tribal interest in self-governance is limited to relations between a tribe and its own members, not all Indians generally. *See, e.g.*, *Duro*, 495 U.S. at 695; *Colville*, 447 U.S. at 160-61; *Oliphant*, 435 U.S. at 211. Further, state jurisdiction does not significantly affect a tribe's retained sovereignty over its territory because this federal interest is significantly diminished where, as here, the state exercises jurisdiction over a person who is not a member of the tribe. *See, e.g.*, *Colville*, 447 U.S. at

161 (concluding that imposition of state sales and cigarette taxes on Indians not members of the tribe does not "contravene the principle of self-government, for the simple reason that nonmembers are not constituents of the governing Tribe."). For these reasons, we conclude that granting Minnesota jurisdiction over R.M.H.'s traffic offenses does not threaten the federal interest in encouraging tribal self-government.

Next, we determine whether state jurisdiction threatens the economic development and self-sufficiency of the White Earth Band. In *Colville*, although the Supreme Court acknowledged that a tribe has the authority to tax transactions occurring on its lands that affect its members, it concluded that such authority does not oust a state from any power to tax on-reservation cigarette purchases by a person not a member of the tribe. 447 U.S. at 152, 155. Accordingly, the Court held that federal law does not preempt a state's sales and cigarette taxes on on-reservation purchases by nonmembers of the tribe. *See id.* at 155-62. The White Earth Band's economic interest in regulating traffic offenses against nonmembers of the tribe is minimal compared to a tribe's economic interest in taxing on-reservation purchases. Therefore, like the Court in *Colville*, we conclude that state jurisdiction over R.M.H.'s offenses does not unduly impinge on the White Earth Band's economic development and self-sufficiency.

Finally, we determine whether state jurisdiction over R.M.H.'s offenses relates to an area pervasively

regulated by federal law. We conclude that it does not. The federal government has not imposed a detailed scheme of traffic regulations on tribal reservations and has demonstrated little interest in enforcement of traffic laws on state-operated and maintained highways. Here, there is no federal regulatory scheme so pervasive as to preclude state jurisdiction.

Juxtaposed with what we conclude is a diminished federal interest in tribal self-government, self-sufficiency, and economic development is Minnesota's strong interest in regulating the safe flow of traffic on its state-operated and maintained highways. Minnesota's interests, when compared with the federal interests, are more than sufficient to justify state jurisdiction over civil/regulatory traffic offenses committed on a state highway on an Indian reservation by an Indian who is not an enrolled member of the governing tribe. *See, e.g., Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 443-44 (1978) ("In no field has this [federal] deference to state regulation been greater than that of highway safety regulation."). Accordingly, we conclude that the federal interest in tribal self-government, self-sufficiency, and economic development is not contravened by state authority over R.M.H.'s traffic offenses. Therefore, we hold that the court of appeals erred when it held that Minnesota did not have jurisdiction over R.M.H.'s traffic offenses.

Reversed and remanded for further proceedings consistent with this opinion.

DISSENT

STRINGER, Justice (dissenting).

I respectfully dissent. Our guiding rule of law is the broad principle that the state does not have jurisdiction over the conduct and affairs of Indians while in Indian country in the absence of a specific grant of Congressional authority to the states to act in derogation of the principles of tribal sovereignty, *see California v. Cabazon Band of Mission Indians*, 480 U.S. 207, 215 (1987), or where state interests are sufficient to justify the exercise of state authority. *See New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983).

Public Law 280 confers to Minnesota, and a few other states, jurisdiction to punish offenses committed by Indians in Indian country. *See* Pub. L. 280, 18 U.S.C. § 1162(a) (1998). In *Cabazon* however, the Supreme Court limited the grant of jurisdiction under Pub. L. 280 to criminal offenses and excluded from state jurisdiction the regulation of conduct that was civil in nature. *See* 480 U.S. at 209. We applied this formulation in *State v. Stone* where we held that nine different motor vehicle violations were civil/regulatory in nature, including proof of insurance and driving without a license, because they do not pertain to fundamental issues of traffic safety on highways such as driving while intoxicated or reckless driving. 572 N.W.2d 725, 731 (Minn. 1997). As civil/regulatory offenses they could not be the subject of state enforcement. *See id.*

The theory of the state is simply that because R.M.H. is not a member of the White Earth Tribe he should be subject to jurisdiction of the state highway regulations, and is premised on the grant of jurisdiction under Public Law 280. But Pub. L. 280 makes no distinction between member and non-member Indians: "[The state] shall have jurisdiction over offenses committed by or against Indians in * * * Indian country." Pub. L. 280, 18 U.S.C. § 1162(a); *see also Topash v. Commissioner of Revenue*, 291 N.W.2d 679, 682 (Minn. 1980) ("Pub. L. 280 * * * refer[s] to "Indians" without distinguishing between tribes. The broad general policy is to protect Indians, of whatever tribe, from state government interference.") (citations omitted) (footnote omitted). [9] When the majority agrees with the state and holds that Pub. L. 280 does not grant the state jurisdiction over R.M.H. it implicitly, if not explicitly, holds that Pub. L. 280, as Congress's express grant of jurisdiction to the states over criminal offenses, *is* federal law that *does* preempt the state from asserting jurisdiction. In light of the Court's mandate that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit," *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985), and because Pub. L. 280 unambiguously fails to distinguish between member and non-member Indians, state jurisdiction over R.M.H. is plainly lacking. The holding of the majority regarding the applicability of Pub. L. 280 thus ends the discussion of preemption. [10]

Even if it were appropriate to go on to compare the interests of competing sovereignties, I would reach

the same result. The majority relies on *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980), a case concerning state authority to collect state taxes from non-member Indians making purchases on an Indian reservation. The majority puts heavy emphasis on the *Colville* Court distinguishing between member and non-member Indians for state taxing purposes, and concludes that "nonmember Indians warrant different considerations than do member Indians" for purposes of state jurisdiction over traffic enforcement. This is a five foot leap over a ten foot ditch however, as the majority provides no reasoning as to why state interests in taxing purchases on reservations are similar to, bear on, or have anything to do with the state's interest in regulating traffic offenses–and the Supreme Court has in fact ruled that a state's interest in tax cases is unique. *See, e.g., Cabazon*, 480 U.S. at 215, n.17 (noting that the area of state taxation of Indian tribes is a "special area" in which the Court has adopted a "*per se* rule"); *see also Mescalero v. Jones*, 411 U.S. 145, 148 (1973) (making reference to "the special area of state taxation"). The federal government obviously has no interest in local traffic enforcement, and the question becomes whether the state's interest in traffic enforcement should be greater than that of the White Earth Band. I do not believe that it is our prerogative to determine that it is, as the interest of both is strong, and tribal governments have the additional interest of retaining sovereignty over the people and conduct on their reservation as well as recognizing the rights of members of all Indian nations. *See, e.g., Mescalero*, 462 U.S. at 334-335.

Congress and the Supreme Court have given states a clear directive in Pub. L. 280 and *Cabazon* that shapes and defines state jurisdiction over certain Indian activities on Indian reservations. An attempt to carve out broader jurisdiction than has been granted to the states is inconsistent with the Supreme Court's mandate that tribal sovereignty is "dependent on, and subordinate to, only the Federal Government, not the States." *Cabazon*, 480 U.S. at 207 (quotation omitted). The rule of the majority undermines this carefully crafted conferral of limited state jurisdiction as applied in *Cabazon* and challenges well-established principles of Indian autonomy and self-government. *See* 480 U.S. at 207 ("Indian tribes retain attributes of sovereignty over both their members and their territory") (quotation omitted). It overlooks "traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its `overriding goal' of encouraging tribal self-sufficiency * * *[,]" *Cabazon*, 480 U.S. at 216 (quoting *Mescalero*, 462 U.S. at 334-335). Finally, by ignoring the guidance provided by Congress and the Supreme Court regarding Pub. L. 280, we as a court ignore the long established and well respected dual federal and state court structure where both institutions ideally embody in their opinions "sensitivity to the legitimate interests of both State and National Governments." *Younger v. Harris*, 401 U.S. 37, 44 (1971).

PAGE, Justice (dissenting).

I join in the dissent of Justice Stringer.

ANDERSON, R., Justice (dissenting).

I join in the dissent of Justice Stringer.

Footnotes

[1] It appears from the record that R.M.H.'s speeding offense was in the nature of a petty misdemeanor. *See* Minn. Stat. § 169.89, subd. 1 (1998).

[2] R.M.H. stipulated that he committed these offenses on the White Earth Reservation, but we note that there is a discrepancy in the record about where the traffic offenses occurred. The traffic citation indicates that the offenses occurred on Minnesota Highway 224, one mile east of Ogema, Minnesota. However, the court transcript reflects that R.M.H. later stipulated that he was driving on Minnesota Highway 59. This discrepancy, however, does not affect the ultimate outcome of this case because both locations are within the boundary of the White Earth Reservation.

[3] It is not clear from the record whether R.M.H. is eligible for membership in the White Earth Band by virtue of his mother being an enrolled member of the band. The issue of R.M.H.'s eligibility for membership in the White Earth Band was not raised and is not a factor in deciding the issue before the court in this case.

[4] Public Law 280, 18 U.S.C. § 1162(a) states:

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses

committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

* * * *

Minnesota . . . . . .All Indian country within the State, except the Red Lake Reservation.

[5] The dissent mischaracterizes our conclusion that Pub. L. 280 does not expressly grant Minnesota jurisdiction over R.M.H.'s offenses when it states that "the majority * * * implicitly, if not explicitly, holds that Pub. L. 280, as Congress's express grant of jurisdiction to the states over criminal offenses, *is* federal law that *does* preempt the state from asserting jurisdiction." Based on this mischaracterization, the dissent then concludes that a preemption analysis is unnecessary. As noted earlier, Pub. L. 280 expressly grants Minnesota broad criminal and limited civil jurisdiction over specified areas of Indian country. 18 U.S.C. § 1162(a). The dissent fails to recognize the marked difference between an express grant and an express prohibition. While Pub. L. 280 does not expressly grant Minnesota jurisdiction over R.M.H.'s offenses, it does not expressly prohibit such jurisdiction. Therefore, as in *Stone*, we must proceed with a preemption analysis. Thus, by focusing only on Pub. L. 280, the dissent falls short in its analysis of the

underlying principles of tribal sovereignty as they apply to this case.

[6] The dissent erroneously concludes that it is only proper to analyze the distinction between member and nonmember Indians in the context of Pub. L. 280. However, in this case, *Cabazon* and *Stone* dictate that this distinction be analyzed in the broader context of preemption.

[7] At the onset of our discussion of the nature of Indian sovereignty, we note that the Supreme Court has not consistently utilized the same nomenclature when addressing this issue. As a result, some of the Court's decisions have not clearly differentiated between nonmember Indians, non-Indians, and Indians.

[8] The dissent questions the propriety of our use of *Colville* to "compare the interests of competing sovereignties," implying that distinguishing between member and nonmember Indians for state taxing purposes does not involve considerations similar to those involved in state jurisdiction over traffic enforcement. In response to this contention, we refer to *Duro* where the Supreme Court considered whether an Indian tribe may assert criminal jurisdiction over a nonmember Indian and used its analysis in *Colville* of the distinction between member and nonmember Indians in relation to self-government as support for its holding. 495 U.S. at 686-87, 690.

[9] The majority inappropriately relies on *Duro v. Reina*, 495 U.S. 676 (1990), *Oliphant v. Suquamish*

Indian Tribe, 435 U.S. 191 (1978) and *United States v. Wheeler*, 435 U.S. 313 (1978) where the Supreme Court established a framework for determining the parameters of tribal jurisdiction over crimes committed by non-member Indians. In *Duro* however the Supreme Court drew a distinction between tribal authority over non-member Indians, not an issue here, and the broad grant of federal jurisdiction with respect to "Indians as a single large class," as Pub. L. 280 provides. *Duro*, 495 U.S. at 689-90.

[10] In *Cabazon* the Supreme Court concluded that Pub. L. 280 did not grant the state jurisdiction to regulate gambling on Indian reservations but went on to a preemption analysis. However, there the Court was determining whether the state had jurisdiction over gambling through a legal basis other than Pub. L. 280. Here there is no question, in light of *State v. Stone*, 572 N.W.2d at 731, that the state does not have jurisdiction over minor traffic offenses committed by Indians on reservations. Now to ignore the plain language of Pub. L. 280 by holding that it does not apply to non-member Indians undermines not only Pub. L. 280 but also *Stone*.

STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1922

Fred Morgan, Jr.,
Appellant,
vs.
2000 Volkswagen,
License No. 279,
VIN #3VWRA29M2YM125643,
Respondent.

Filed August 12, 2008
Reversed
Stoneburner, Judge

Mahnomen County District Court
File No. C00722

Frank Bibeau, Christopher Allery, Anishinabe Legal Services, P.O. Box 157, 411 First Street, Cass Lake, MN 56633 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Julie Bruggeman, Mahnomen County Attorney, P.O. Box 439, 311 N. Main Street, Mahnomen, MN 56557 (for respondent)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Stoneburner, Judge.

SYLLABUS

Minnesota lacks jurisdiction to apply the civil vehicle-forfeiture law, Minn. Stat. § 169A.63 (2006), when the conduct giving rise to forfeiture occurred on an Indian reservation and the owner of the vehicle is an enrolled member of the tribe on that reservation.

OPINION

STONEBURNER, Judge

Appellant, an enrolled member of an Indian tribe, challenges forfeiture of his vehicle, asserting that the State of Minnesota does not have jurisdiction to enforce its vehicle-forfeiture statute against the vehicle he used in committing a designated offense on his tribe's reservation.

FACTS

Appellant Fred Morgan, Jr., an enrolled member of the Minnesota Chippewa Tribe, was charged with a "designated offense,"[1] triggering forfeiture of respondent 2000 Volkswagen, License No. 279, VIN #3VWRA29M2YM125643, owned by Morgan and used in the commission of the offense. The designated offense was committed in Mahnomen

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[1] Morgan was charged with one count of third-degree driving while impaired (Minn. Stat. §§ 169A.20, subd. 1(1), .26, subd. 1 (2006)), and one count of second-degree refusal to submit to chemical test (Minn. Stat. §§ 169A.20, subd. 2, .25, subd. 1(b) (2006). Section 169A.25 is included in the definition of a "designated offense" under Minn. Stat. § 169A.63, subd. 1(e)(1) (2006).

County, which is wholly within the boundaries of the White Earth Reservation of the Minnesota Chippewa Tribe.

Morgan timely demanded judicial determination of the vehicle forfeiture under Minn. Stat. § 169A.63, subd. 8(d) (2006), asserting that the forfeiture action should be dismissed because Minnesota lacks jurisdiction to enforce the vehicle-forfeiture statute when the incident triggering forfeiture involves conduct that occurred on an Indian reservation and the owner of the vehicle is an Indian.[2] The district court denied Morgan's motion to dismiss, concluding that, for the purpose of jurisdiction to enforce a statute on an Indian reservation, the vehicle-forfeiture statute is a criminal law,[3] and state jurisdiction exists under federal law granting Minnesota broad criminal

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[2] Morgan seeks prohibition of enforcement of the vehicle-forfeiture statute against any Indian-owned vehicle for conduct that occurred on any reservation. We limit this decision to the facts presented: enforcement of the law against an Indian-owned vehicle for conduct committed on the owner's reservation.

[3] In response to Morgan's argument that if the vehicle-forfeiture statute is a criminal law, enforcement of the forfeiture statute together with prosecution for the designated offense violates the Double Jeopardy Clause of the United States Constitution, the district court reasoned that for double-jeopardy analysis, the forfeiture statute is remedial and rationally related to the state's purpose of removing such offenders from the road.

jurisdiction over specified areas of Indian country, including the White Earth Reservation. This appeal followed.

ISSUE

Does the state have jurisdiction to enforce its civil vehicle-forfeiture law against a vehicle owned by an enrolled member of an Indian tribe when the conduct giving rise to forfeiture occurred on the owner's reservation?

ANALYSIS

I. Public Law 280 jurisdiction

Issues of jurisdiction are reviewed de novo. *State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000). Federal statutes and caselaw govern a state's jurisdiction over Indians. *Id.* Congress granted Minnesota broad criminal and limited civil jurisdiction over specified Indian country within the state.[4] Act of Aug. 15 1953, Pub. L. No. 83-280, §§ 1162, 1360, 67 Stat. 588-90 (1953) (codified as amended at 18 U.S.C. § 1162 (2000), 28 U.S.C. § 1360 (2000)).

In *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997), the supreme court adopted the analytical framework approved by the United States Supreme

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[4] The grant of jurisdiction excluded the Red Lake Reservation. § 1162, 67 Stat. at 588. And in 1973, the state retroceded all criminal jurisdiction over the Bois Forte Reservation back to the federal government under the authority of 25 U.S.C. § 1323. 1973 Minn. Laws ch. 625, § 3, at 1501.

Court in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S. Ct. 1083 (1987), for determining whether Minnesota has jurisdiction under Public Law 280 to enforce a state law in Indian country. *Cabazon* instructs that

> when a State seeks to enforce a law within an Indian reservation under the authority of Pub. L. 280, it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation . . . or civil in nature, and applicable only as it may be relevant to private civil litigation in state court.[5]

480 U.S. at 208, 107 S. Ct. at 1088. In making this determination, laws are classified as state "criminal/prohibitory" laws or state "civil/regulatory" laws:

> [I]f the intent of a state law is generally to prohibit certain conduct, [it is criminal/prohibitory and] it falls within Pub.L. 280"s grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub.L.

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[5] No argument has been advanced in this case that the state has jurisdiction under Pub. L. 280"s limited grant of jurisdiction to enforce state civil laws on Indian reservations.

> 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy.

Id. at 209, 107 S. Ct. at 1088. But there is no bright-line distinction between the classifications, and "[t]he applicable state laws governing an activity must be examined in detail before they can be characterized as regulatory or prohibitory." *Id.* at 211 n.10, 107 S. Ct. at 1089 n.10.

To determine whether the vehicle-forfeiture statute is "criminal/prohibitory" or "civil/regulatory," we begin with an examination of relevant parts of the statute and existing caselaw involving the statute. The statute provides that "[a] motor vehicle is subject to forfeiture under this section if it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation." Minn. Stat. § 169A.63, subd. 6(a) (2006).[6] "An action for forfeiture is a civil in rem action and is independent of any criminal prosecution. All proceedings are governed by the Rules of Civil Procedure." Minn. Stat. § 169A.63, subd. 9(a) (2006).

This court has rejected the classification of the vehicle-forfeiture statute as "punishment" for double-jeopardy purposes. *Hawes v. 1997 Jeep Wrangler*, 602 N.W.2d 874, 878 (Minn. 1999) (noting

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[6] The vehicle-forfeiture statute was recodified in 2000 from section 169.1217 to section 169A.63. 2000 Minn. Laws ch. 478, art. 1, § 37, at 1519-24.

that the legislature designed the vehicle-forfeiture statute as a civil proceeding to serve the nonpunitive remedial goal of enhancing public safety and stating that there was no support in the record for a conclusion that a "forfeiture proceeding is so punitive that it can only be characterized as criminal").

Morgan submitted numerous district court decisions to the district court demonstrating that district courts have frequently relied on *Hawes* to conclude that the vehicle-forfeiture statute must be classified as "civil/regulatory" in the context of a Public Law 280 analysis. In this case, however, the district court held that for purposes of determining jurisdiction, the statute is "criminal/prohibitory and not civil/regulatory" because "[t]he intent of this law is to prohibit certain conduct and not to regulate permitted conduct." The district court distinguished the jurisdictional analysis from the double-jeopardy analysis undertaken in *Hawes*, finding that, consistent with double-jeopardy caselaw, the statute is, for double-jeopardy purposes, a civil-remedial sanction that does not violate the Minnesota and United States Double Jeopardy Clauses.

The Minnesota Supreme Court used a similar approach in determining whether Minn. Stat. § 243.166 (2002), which requires registration by persons who have been convicted or adjudicated delinquent of designated crimes, could be enforced against an Indian on his reservation. *State v. Jones*, 729 N.W.2d 1, 3 (Minn. 2007). The supreme court had previously classified the registration statute as "remedial" rather than "punitive" under a double-jeopardy analysis. *Id.* at 9 (citing *Boutin v. LaFleur*,

591 N.W.2d 711, 717 (Minn. 1999), and *Kaiser v. State*, 641 N.W.2d 900, 907 (Minn. 2002)). But in *Jones*, the supreme court, without overruling *Boutin* and *Kaiser*, noted that neither of those cases determined how the statute should be classified under *Cabazon*. *Id.* The supreme court explained that *Boutin* and *Kaiser* were distinguishable:

> We acknowledge that our use in *Boutin* and *Kaiser* of the terms "punitive"—which we used interchangeably with "criminal"—and "civil, regulatory" could cause confusion in our analysis under the *Cabazon/Stone* test, which distinguishes conduct that is "criminal/prohibitory" from that which is "civil/regulatory." But "punitive" is not the same as "prohibitory," and the definition of "regulatory" under the [] analysis of *Boutin* and *Kaiser* does not have the same meaning as "regulatory" employed by Pub. L. 280 and *Cabazon*. . . . Therefore, for all the foregoing reasons, we conclude that *Boutin* and *Kaiser* are distinguishable and do not require us to conclude that [the registration statute] is civil/regulatory in nature under the *Cabazon/Stone* test.

Id. at 11.

Because *Hawes* did not address the classification of the vehicle-forfeiture statute under the *Cabazon/Stone* test, we conclude that, consistent with the supreme court's reasoning in *Jones*, the

holding in *Hawes* does not answer the question of whether the statute is criminal/prohibitory or civil/regulatory in the context of a jurisdiction analysis under Public Law 280. And designation of the statute as "criminal/prohibitory" for the jurisdiction analysis does not make the statute "punitive" for double-jeopardy purposes, as Morgan argues. We return then, to a determination of the proper classification of the vehicle-forfeiture statute under the *Cabazon/Stone* analysis.

The first step in determining the classification of a statute under *Cabazon/Stone* is to identify the conduct at issue. *Stone*, 572 N.W.2d at 730. The supreme court in *Stone* noted some ambiguity in the shorthand test described in *Cabazon* because "[t]he Supreme Court did not clearly state whether the „conduct at issue" to be analyzed is the broad conduct . . . or the narrow conduct," a distinction that the supreme court found "crucial when the broad conduct is generally permitted but the narrow conduct is generally prohibited, or vice versa." *Id.* at 729. "The broad conduct will be the focus of the test *unless* the narrow conduct presents substantially different or heightened public policy concerns. If this is the case, the narrow conduct must be analyzed apart from the broad conduct." *Id.* at 730.

We conclude that the broad conduct at issue in this case is owning a vehicle that is operated on public highways, and the narrow conduct is owning such a vehicle when it is used in the commission of a designated offense under the vehicle-forfeiture statute or to engage in conduct that results in a designated license revocation. *See* Minn. Stat. § 169A.63, subd. 6(a). Having identified the broad and

narrow conduct at issue, we must determine whether the narrow conduct "presents substantially different or heightened public policy concerns" than the broad conduct.

In *State v. Busse*, the supreme court examined the statute that prohibits driving after cancellation as inimical to public safety and identified the broad conduct involved as "driving" and the narrow conduct as "driving after cancellation as inimical to public safety." 644 N.W.2d 79, 83 (Minn. 2002). The supreme court determined, based on the criminal sanctions imposed by the statute and because the statute targeted those who exhibit a "pattern of behavior [that] signals both a significant alcohol or drug problem and a defiance of the laws of our state, and thus, a significant risk to public safety," that the narrow conduct involved heightened public-policy concerns. *Id.* at 86-87.

In *Stone*, which involved jurisdiction to enforce various non-DWI-related traffic offenses, the supreme court identified the broad conduct at issue as driving and the narrow conduct as driving without a valid license or proof of insurance, driving without a seatbelt, or driving in excess of the speed limit. 572 N.W.2d at 730. The supreme court concluded that the narrow conduct related to the general public policy of promoting safety on roadways and did not involve heightened public policy. *Id.* at 730-31. *Stone* states that the public policy underlying laws aimed at driving while impaired "is substantially heightened in comparison to the general scheme of driving laws, in that their violation creates a greater risk of direct injury to persons and property on the roadways." *Id.* at 731.

The designated offenses and license revocations that trigger vehicle forfeiture all relate to driving while impaired, suggesting heightened public-policy concerns. However, the narrow focus of the vehicle-forfeiture statute is not on driving conduct, but rather the ownership of the involved vehicle. Owners of vehicles are subject to numerous regulations. Owners of vehicles operated on public highways are required to register, Minn. Stat. § 168.09, subd. 1 (2006); insure, Minn. Stat. § 65B.48, subd. 1 (2006); maintain and operate in a safe condition, Minn. Stat. § 169.47, subd. 1 (2006); and appropriately dispose of such vehicles, Minn. Stat. § 168B.03 (2006). In order to avoid forfeiture, the vehicle-forfeiture statute requires that a vehicle owner not have any "actual or constructive knowledge that the vehicle [will] be used or operated in any manner contrary to law," or show that "the owner took reasonable steps to prevent use of the vehicle by the offender." Minn. Stat. § 169A.63, subd. 7(d) (2006). As with the laws involved in *Stone*, all of these laws, including the vehicle-forfeiture law, appear to be closely related to the general public policy of promoting safety on the roadways. Therefore, we conclude that the narrow conduct involved in the vehicle-forfeiture law does not need to be analyzed apart from the broad conduct.

"After identifying the focus of the *Cabazon* test, the second step is to apply it. If the conduct is generally permitted, subject to exceptions, then the law controlling the conduct is civil/regulatory." *Stone*, 572 N.W.2d at 730. Plainly, the ownership of vehicles is generally permitted conduct, subject to regulation, leading us to conclude that the vehicle-

forfeiture statute is a civil/regulatory statute, and the state does not have authority under Public Law 280 to enforce it against Indian-owned vehicles for conduct occurring on the owner's reservation.

We further conclude, however, that even if we were to analyze the narrow conduct apart from the broad conduct, under the "shorthand test" for distinguishing civil/regulatory statutes from criminal/prohibitory statutes, we would reach the same conclusion: that the statute is civil/regulatory. *Stone* instructs that in close cases, *Cabazon's* "shorthand public policy test," which provides that conduct is criminal if it violates the state's public policy, aids in the distinction. 572 N.W.2d at 730.

Because all laws implicate some public policy, "in light of the purpose of Public Law 280 to combat lawlessness, [the supreme court] interprets public policy, as used in the *Cabazon* test, to mean public *criminal* policy." *Id.* "Public criminal policy goes beyond merely promoting the public welfare. It seeks to protect society from serious breaches in the social fabric which threaten grave harm to persons or property." *Id.* In *Stone*, the supreme court listed four factors useful in determining whether an activity violates state public policy in a manner serious enough to be considered criminal:

> (1) the extent to which the activity directly threatens physical harm to persons or property or invades the rights of others; (2) the extent to which the law allows for exceptions and exemptions; (3) the blameworthiness of the actor; (4) the nature and severity of

> the potential penalties for a violation of the law. This list is not meant to be exhaustive, and no single factor is dispositive.

Id. We turn, then, to the application of these factors in the case at hand.

a. The extent to which the activity directly threatens physical harm to others or property

Because the narrow conduct involves ownership of a vehicle used by an impaired driver, it can be said to involve a direct threat of physical harm to others or property, and this factor would weigh in favor of holding that the vehicle-forfeiture law is criminal/prohibitive.

b. The extent to which the law allows for exceptions and exemptions

The vehicle-forfeiture law is not mandatory or automatic; a vehicle is only *subject* to forfeiture. And the law contains exceptions: it does not apply to a vehicle when the owner did not know of a driver's intended unlawful use or when an owner, secured party, or lessor of the vehicle took steps to terminate the unlawful use. Minn. Stat. § 169A.63, subd. 7 (c), (d). Additionally, the law does not prohibit the owner from owning other vehicles. We conclude that this factor weighs in favor of holding that the statute is civil/regulatory.

c. The blameworthiness of the actor

The owner of a vehicle subject to forfeiture need not be the person who commits the conduct on which

forfeiture is based. And forfeiture is presumed under the statute for conduct such as failing to appear for a scheduled court appearance and failing to seek timely judicial review of a license revocation as well as for conviction of the designated offense on which the forfeiture is based. Minn. Stat. § 169A.63, subd. 7(a)(1)-(3). Because the owner of a vehicle that is subject to forfeiture may be relatively blameless, we conclude that this factor weighs in favor of a determination that the statute is civil/regulatory.

d. The nature and severity of the potential penalties for a violation of the law

The nature of the penalty is fixed: forfeiture of the vehicle. There are no criminal penalties involved. The severity of forfeiture appears to depend on the financial circumstances of the person or persons affected by the forfeiture. We conclude that this factor weighs in favor of a determination that the statute is civil/regulatory.

Therefore, under the "shorthand public policy test," we conclude that, even if the focus is on the "narrow conduct," the vehicle-forfeiture statute is properly classified as civil/regulatory, and Public Law 280 does not expressly grant the state jurisdiction to enforce the statute against an Indian-owned vehicle for conduct committed on the owner's reservation.

II. Jurisdiction under exceptional circumstances

Absent an express congressional grant of jurisdiction, Minnesota can nonetheless exercise

jurisdiction over "on-reservation activities by tribal members" if "exceptional circumstances" exist and federal law does not preempt state jurisdiction. *Jones*, 729 N.W.2d at 12 (Anderson, J. concurring) (citing *Cabazon*, 480 U.S. at 215, 107 S. Ct. at 1083); *R.M.H.*, 617 N.W.2d at 60 (noting that "a state may exercise jurisdiction on a tribal reservation absent express federal consent if the operation of federal law does not preempt it from doing so")). "Cases presenting „exceptional circumstances," such that the Supreme Court has approved the exercise of state jurisdiction over the activities of member Indians on reservations without an express federal grant of authority, have primarily involved an indirect purpose to regulate non Indians." *Stone*, 572 N.W.2d at 731 (citing *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 159, 100 S. Ct. 2069, 2084 (1980) (holding that a state could require reservation "smoke shops" to collect state sales tax from non-Indian customers); *Moe v. Confederated Salish & Kootenai Tribes*, 25 U.S. 463, 483, 96 S. Ct. 1634, 1646 (1976) (same)).

This court recently held that, based on "strong state interests" and absent a threat to "the federal interest in preserving Tribal self-government, the state has jurisdiction to civilly commit a member of the Red Lake Band of Chippewa Indians as a sexually dangerous person.[7] *In re Commitment of*

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[7] Under Public Law 280, the Red Lake Band reservation is excluded from the grant of state jurisdiction. *See* 18 U.S.C. § 1162(a) (2000). At the time *Beaulieu* was decided, the tribe did not have

Beaulieu, 737 N.W.2d 231, 241 (Minn. App. 2007). But in *Stone*, the supreme court found that the state had not established extraordinary circumstances permitting enforcement of statutes regulating driving conduct against Indians on their reservations because the state had failed to show circumstances sufficient to "overcome the right of reservation Indians to make their own laws and be ruled by them." 572 N.W.2d at 732.

In this case, the state has not filed an appellate brief or otherwise asserted that jurisdiction exists under "exceptional circumstances." We conclude that any argument for jurisdiction on this basis is waived and need not be addressed.

DECISION

Because the vehicle-forfeiture law, Minn. Stat. § 169A.63, is a civil/regulatory law, the state lacks jurisdiction under Public Law 280 to enforce the statute against Indian owners of vehicles for conduct that occurs on the owner's reservation. Because the state has failed to show any other basis for asserting jurisdiction to enforce the vehicle-forfeiture law in these circumstances, the district court erred in denying Morgan's motion to dismiss the forfeiture proceeding against his vehicle.

Reversed.

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laws addressing commitment of sexually dangerous persons. *Beaulieu*, 737 N.W.2d at 239.

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).

STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1622

Margaret Mary Nason,
Respondent,

vs.

1991 Buick, Plate No. VXL501/MN, VIN 1G4EZ13LXMU408829,
Appellant.

Filed February 9, 2010
Reversed
Halbrooks, Judge

Mille Lacs County District Court
File No. 48-CV-08-1327

Christopher Allery, Frank Bibeau, Anishinabe Legal Services, Cass Lake, Minnesota (for respondent)

Janice S. Kolb, Mille Lacs County Attorney, Mark J. Herzing, Assistant County Attorney, Courthouse Square, Milaca, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Toussaint, Chief Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's dismissal of a civil forfeiture proceeding on the ground that it lacks subject-matter jurisdiction. Because we conclude, based on the holding in *State v. Davis*, 773 N.W.2d 66 (Minn. 2009), that the district court has subject-matter jurisdiction over the forfeiture proceeding, we reverse.

FACTS

Appellant Mille Lacs County seized respondent Margaret M. Nason's 1991 Buick (vehicle) after the vehicle's operator, Matthew J. Hvezda, was arrested for second-degree test refusal in violation of Minn. Stat. §§ 169A.20, subd. 2, .25, subd. 1(b) (2006). Both the incident leading to Hvezda's charge and the subsequent seizure of respondent's vehicle occurred on Nay Ah Shing Drive, which is located on land held in trust by the federal government for the Mille Lacs Band of Ojibwe Indians, or on "Indian Country" as defined by 18 U.S.C. § 1151 (2006). Respondent, the registered owner of the vehicle, was served with a notice of seizure and intent to forfeit vehicle; she was not involved in the incident leading to the charge and was not a defendant in the criminal case. Respondent is an enrolled member of the Fond du Lac Band but is not enrolled in the Mille Lacs Band.

Both the Fond du Lac Band and the Mille Lacs Band are member bands of the Minnesota Chippewa Tribe, a federally recognized Indian tribe.

Respondent filed a claim in Mille Lacs County conciliation court, arguing that she is entitled to the return of her vehicle because the State of Minnesota lacks subject-matter jurisdiction to seize and forfeit the vehicle. Respondent based this argument on the facts that the incident and seizure occurred on the Mille Lacs Reservation and that respondent is an enrolled member of the Minnesota Chippewa Tribe. Appellant moved for summary judgment, arguing that the state has subject-matter jurisdiction over the forfeiture proceeding. Because respondent's sole challenge to the forfeiture was the state court's lack of subject-matter jurisdiction, appellant argued that it was entitled to summary judgment on the ground that the forfeiture was properly in state court.

Respondent moved to dismiss the forfeiture action arguing that the state court lacks subject-matter jurisdiction. Respondent maintained that Congress did not grant the state jurisdiction over civil/regulatory proceedings involving Indians, and thus the state is without the power to seize and forfeit her vehicle based on conduct that occurred on the Mille Lacs Reservation. The conciliation court granted respondent's motion to dismiss, concluding that the state court "lacks subject matter jurisdiction over this civil forfeiture matter because [respondent] is an enrolled member of the Minnesota Chippewa

Tribe and the [site] of the incident was within Indian Country as defined by Public Law 280."

Appellant demanded removal to the district court, contending that the district court has subject-matter jurisdiction to order the forfeiture of the vehicle. Appellant argued in part that the jurisdiction granted by Public Law 280 encompasses this civil forfeiture because state jurisdiction would not interfere with a tribal interest in self-governance. The district court dismissed the forfeiture action for lack of subject-matter jurisdiction, reasoning that the forfeiture statute is civil/regulatory, and thus the proceeding is not within the scope of jurisdiction granted to the state under Public Law 280. Appellant moved for amended findings to include the fact that respondent is enrolled in the Fond du Lac Band, that respondent is not enrolled in the Mille Lacs Band, and that Nay Ah Shing Drive is located in "Indian Country" as defined by federal law. Appellant cited but did not request reconsideration based on *State v. R.M.H.*, 617 N.W.2d 55 (Minn. 2000), which held that the district court has subject-matter jurisdiction over civil/regulatory offenses that occur in Indian Country when the individual is not enrolled in the tribe associated with the reservation where the offense occurred. The district court granted the motion for amended findings without addressing *R.M.H.*

Appellant filed a notice of appeal, challenging the district court's dismissal based on the holding in *R.M.H.* Following oral arguments, we stayed resolution of this matter pending the outcome of *State v. Davis*, 773 N.W.2d 66 (Minn. 2009). In light of *Davis*, we now address the issue raised by appellant.

D E C I S I O N

Appellant contends that the district court erred by granting respondent's motion to dismiss based on lack of subject-matter jurisdiction. Appellant argues that, under *R.M.H.*, the state has jurisdiction over the forfeiture proceeding because the vehicle was seized on the Mille Lacs Reservation and respondent is enrolled in the Fond du Lac Band. Generally, issues not raised to the district court will not be addressed on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But this is not an "ironclad rule," *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002), and appellant did raise the issue of subject-matter jurisdiction to the district court, albeit under a different legal theory. Because subject-matter jurisdiction cannot be waived, we address appellant's arguments. *See* Minn. R. Civ. App. P. 103.04 (noting that appellate courts may address issues as justice requires); *Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 907 (Minn. 1998) ("[I]t is blackletter law that subject matter jurisdiction may not be waived." (footnote omitted)).

"Subject-matter jurisdiction is a court's power to hear and determine cases that are presented to the court." *State v. Losh*, 755 N.W.2d 736, 739 (Minn. 2008). "State jurisdiction over Indians is governed by federal statutes or case law." *R.M.H.*, 617 N.W.2d at 58. We review issues of jurisdiction de novo. *Davis*, 773 N.W.2d at 68.

Public Law 280 expressly grants the State of Minnesota broad criminal jurisdiction "over offenses committed by or against Indians in the areas of Indian country . . . to the same extent that [the state] has jurisdiction over offenses committed elsewhere within the [s]tate." 18 U.S.C. § 1162 (2006). But the state's civil jurisdiction is limited and applies only to "private civil litigation involving reservation Indians in state court." *Bryan v. Itasca County*, 426 U.S. 373, 385, 96 S. Ct. 2102, 2109 (1976); *see also* 28 U.S.C. § 1360(a) (2006) (addressing the states" limited jurisdiction over civil causes of action involving Indians). The state's civil jurisdiction does not confer general civil regulatory powers to the states over Indians. *Bryan*, 426 U.S. at 390, 96 S. Ct. at 2111-12. In examining the vehicle forfeiture law found in Minn. Stat. § 169A.63 (2006), this court has held that the statute is civil/regulatory as opposed to criminal/prohibitory. *Morgan v. 2000 Volkswagen*, 754 N.W.2d 587, 595 (Minn. App. 2008). Because this is a regulatory civil case and not a private civil case or a criminal case, the state does not have jurisdiction under the authority granted by

Public Law 280 to entertain vehicle forfeiture cases involving Indians. *Id.* But the inapplicability of Public Law 280 does not end our analysis.

In the absence of jurisdiction expressly provided by Congress, we engage in a preemption analysis to determine whether the state has subject-matter jurisdiction. "State jurisdiction is preempted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *R.M.H.*, 617 N.W.2d at 60 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334, 103 S. Ct. 2378, 2386 (1983)).

As noted, respondent is enrolled in the Fond du Lac Band of the Minnesota Chippewa Tribe. But the incident that gave rise to the forfeiture proceeding occurred on the Mille Lacs Reservation. The Minnesota Supreme Court recently considered a similar issue regarding the ability of the state to assert subject-matter jurisdiction over an offense by a member of the Leech Lake Band that occurred on the Mille Lacs Reservation. *Davis*, 773 N.W.2d at 68. Like respondent here, Davis argued that the district court lacked subject-matter jurisdiction over his traffic offense because he is "an Indian who committed an offense in Indian Country." *Id.* Because speeding offenses are also civil/regulatory offenses, *R.M.H.*, 617 N.W.2d at 60, the court in *Davis* engaged in a preemption analysis to

determine whether the state had subject-matter jurisdiction. *Id.* at 72-74.

The supreme court first accepted that the state has a strong interest in "ensuring traffic safety on state highways." *Id.* at 72. The supreme court then concluded that "there is no indication that enforcement of Minnesota traffic laws is inconsistent with federal pronouncements on the topic," and enforcing state laws against Davis in state courts would not interfere with federal or tribal interests. *Id.* at 72-73. Significantly, the supreme court recognized that the usually strong interest in tribal self-governance was not as compelling in *Davis*:

> [I]f Davis were a member of the Mille Lacs Band, the interest in tribal self-governance would be directly served through the Band's enforcement of its laws against one of its members in its tribal court for conduct that occurred on the reservation. But Davis is not a member of the Mille Lacs Band and so operation of state law to Davis" on-reservation conduct does not infringe on the Band's self-governance interest to the same extent as in [other cases].[1]

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[1] The supreme court cited to *State v. Stone*, 572 N.W.2d 725 (Minn. 1997). In *Stone*, the supreme court declined to recognize jurisdiction when the state sought to apply state laws to the conduct of a White Earth Band member that occurred on the

Id. at 74. The supreme court also rejected Davis's argument that the tribal interest in self-governance rests with the entire Minnesota Chippewa Tribe, not just with the individual Band on whose reservation the offense took place. *Id.* "[T]he [Minnesota Chippewa Tribe's] constitution does not possess any apparatus for law enforcement or judicial decision-making. If Davis were to be prosecuted in tribal court, the offense at issue would be governed by a Mille Lacs Band law, and would be tried in a Mille Lacs Band tribal court[.]" *Id.* The supreme court therefore held that the state court had jurisdiction to enforce state traffic laws against Davis. *Id.*

Following the supreme court's analysis in *Davis*, we reach the same conclusion. First, the state has a strong interest in promoting safety on state roads. In *Morgan*, we examined the vehicle forfeiture statute and determined that it is "closely related to the general public policy of promoting safety on the roadways." 754 N.W.2d at 593. Handling the civil forfeiture proceeding in state court will further this strong interest. Second, proceeding with the

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White Earth Reservation. 572 N.W.2d at 732. The supreme court found that the state did not show "extraordinary circumstances with which to overcome the right of reservation Indians to make their own laws and be ruled by them." *Id.* (quotation omitted).

forfeiture action in state court does not interfere with federal or tribal interests, nor is state jurisdiction incompatible with federal or tribal interests. Maintaining the forfeiture action will not "interfere with „the sole source of revenues for the operation of tribal governments,"" and the state forfeiture law is not inconsistent with any federal laws on traffic regulation or enforcement. *Davis*, 773 N.W.2d at 72-73 (quoting *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 218, 107 S. Ct. 1083, 1093 (1987)). Additionally, the tribal interest in self-governance is not as strong in this case because respondent is not a member of the Mille Lacs Band. "Indian sovereignty is at its strongest in the context of self-governance, that is, authority over members of the governing tribe. In contrast, the strength of Indian sovereignty is less with respect to authority over nonmembers of the governing tribe, including nonmember Indians." *R.M.H.*, 617 N.W.2d at 61.

The tribal interest in self-governance rests with the Mille Lacs Band of Ojibwe Indians—both the incident leading to the forfeiture proceeding and the seizure of respondent's vehicle took place on the Mille Lacs Reservation. Because respondent is enrolled in the Fond du Lac Band, the Mille Lacs Band's interest in self-governance is not as strong over respondent. We reject respondent's argument that we should consider the Minnesota Chippewa Tribe as a whole when assessing the strength of the

interest in self-governance; that argument was considered and rejected by the supreme court in *Davis*, and we find nothing to distinguish respondent's case from *Davis*.

Based on the state's strong interest of promoting safety on state roads and the weaker tribal interest in self-governance present in this case, we conclude that a forfeiture proceeding against respondent in state court is not preempted by federal or tribal interests. We therefore conclude that the state has subject-matter jurisdiction to hear the forfeiture action involving respondent's vehicle.

Reversed.

No. 09-1002

Supreme Court, U.S.
FILED
MAR 2 5 2010
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In the Supreme Court of the United States

DAVID MICHAEL DAVIS,

Petitioner,

v.

THE STATE OF MINNESOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF FOR THE STATE OF MINNESOTA IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Minnesota Supreme Court properly determine that the state court had subject matter jurisdiction over the traffic offenses of an Indian, who was issued a state traffic citation by the arresting Tribal officer under a law enforcement agreement with the County Sheriff, for driving conduct outside the defendant's "home" reservation?

2. Does the state have jurisdiction in Indian Country over the traffic offenses of an Indian committed in Indian Country outside his "home" reservation either under the preemption analysis of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) or over criminal offenses under Public Law 280, 18 U.S.C. §1162(a)?

3. If the Court is inclined to review the issues presented by the Petition, should the case be remanded for a determination of the status of the 1855 Mille Lacs Reservation and whether the offenses occurred in Indian Country?

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In the Supreme Court of the United States

No. 09-1002

DAVID MICHAEL DAVIS,

Petitioner,

v.

THE STATE OF MINNESOTA,

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF FOR THE STATE OF MINNESOTA IN OPPOSITION

OPINIONS BELOW

The opinion of the Minnesota Supreme Court (Pet. App. 3a)[1] is reported at 773 N.W.2d 66 (Minn. 2009). The opinion of the Minnesota Court of Appeals is unpublished, but is reported at 2008 WL 2726950

[1] References to "Pet." Or "Pet. App." Refer to the Petition and Petition Appendix respectively. The Petition Appendix is unnumbered, so references are to the page numbers that would be assigned if numbered by Petitioner.

(Minn. App.) Pet. App. 26a. The Verdict and Order of the Minnesota District Court for the Seventh Judicial District, Court File No. CR-05-3441 are unpublished but are contained in Pet. App. 32a and 35a.

JURISDICTION

The Judgment of the Minnesota Supreme Court was entered on November 16, 2009, pursuant to Notice of Entry of Order. Pet. App. 1a. The Petitioner has invoked Supreme Court Rule 13 for review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort. Although unstated in the Petition for Writ of Certiorari, the Petitioner apparently seeks to invoke the jurisdiction of this Court under 28 U.S.C. §1257(a).

STATEMENT

1. On December 3, 2005, Petitioner David Michael Davis was driving on Highway 169 in Mille Lacs County, Minnesota. *Davis,* 773 N.W.2d at 67. Joshua Kimball, an officer with the Mille Lacs Tribal Police, was on patrol and observed Davis traveling at a high rate of speed. *Id.* After confirming with his radar equipment that Davis was traveling approximately fifteen miles per hour over the speed limit, Officer Kimball activated the emergency light on his squad car to initiate a traffic stop, but Davis continued driving. *Id.* Davis turned off Highway 169 onto Ataage Drive in North Kathio, Minnesota and stopped his vehicle. *Id.* The Minnesota Supreme Court assumed for the purpose of its opinion that the area

where Davis stopped the vehicle is land held in trust by the United States for the Mille Lacs Band of Chippewa Indians. *Id.* Davis is an Indian registered with the Leech Lake Band. *Id.* at 68.

Davis informed Officer Kimball that his vehicle was uninsured. *Id.* at 67. Officer Kimball determined that there was an outstanding warrant for Davis' arrest from a previous failure to provide proof of insurance in violation of state law. *Id.* Davis was arrested on the outstanding warrant, and Officer Kimball issued Davis a state citation for speeding and driving without proof of insurance. *Id.* These two new traffic offenses by Davis were treated by the Minnesota courts as violations of "civil/regulatory laws" under the analysis of federal law precedent in *State v. Stone*, 572 N.W.2d 725, 731 (Minn. 1997). *Davis*, 773 N.W.2d at 72, n. 4.

2. Minnesota state law provides "cross-deputization" authority for Mille Lacs Tribal Police, as licensed police officers, to act with the "same powers as peace officers employed by local units of government." Minn. Stat. §626.90, subd. 3 (2008). 773 N.W.2d at 67, n. 1. That statute authorizes an agreement between the Mille Lacs County Sheriff and the Mille Lacs Band to carry out the purposes of the Statute. Minn. Stat. §626.90, subd. 2(b) (2008). "The Mille Lacs County Attorney is responsible to prosecute or initiate petitions for any person arrested by" tribal officers acting under its authority. Minn. Stat. §626.90, Subd. 5 (2008). 773 N.W.2d at 67, n. 1. Minnesota is a Public Law 280 state with civil and criminal jurisdiction in all Indian Country within the state (except the Red Lake Reservation not at issue here). *Id.* at 69, n. 3.

3. The Minnesota Chippewa Tribe (MCT) is a federally recognized Indian Tribe with six member bands, including the Leech Lake Band and the Mille Lacs Band. *Id.* at 68. Davis is a registered member of the Leech Lake Band. *Id.* Davis is not a member of the Mille Lacs Band, and does not reside on Mille Lacs trust lands. *Id.* The Mille Lacs Band and the Leech Lake Band are also federally recognized Bands. 60 FR 9250, Department of the Interior, Bureau of Indian Affairs, *Indian Entities Recognized and Eligible to Receive Service From the United States Bureau of Indian Affairs*, (Feb. 16, 1995). That listing itself states that inclusion "does not resolve the scope of powers. . .over land or non-members." *Id.* [updated listing at 73 FR 18,553 (April 4, 2008)].

4. At the district court, Davis argued that the Minnesota courts lacked subject-matter jurisdiction because he was an Indian who committed an offense in Indian Country, and only the Tribal Court had jurisdiction. 773 N.W.2d at 68. The District Court denied Davis' motion, determining that the State has jurisdiction over traffic offenses committed on Indian reservations by non-members of the reservation, relying upon the Minnesota Supreme Court's decision in *State v. R.M.H.*, 617 N.W.2d 55 (Minn. 2000). 773 N.W.2d at 68. Davis waived his right to a jury trial and proceeded with stipulated facts under *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). Pet. App. 27a. The District Court found Davis guilty. Pet. App. 32a-33a. The Minnesota Court of Appeals affirmed, again finding state subject-matter jurisdiction. *State v. Davis,* 2008 W.L. 2726950 (Minn. App. 2008) p. *1. Pet. App. 26a, 31a.

5. The Minnesota Supreme Court granted review and affirmed. *State v. Davis,* 773 N.W.2d at 67. The Minnesota Supreme Court rejected the argument that its decision in *R.M.H.* had been superseded by *United States v. Lara*, 541 U.S. 193 (2004), which interpreted and applied the so-called "*Duro* fix," 25 U.S.C. §1301(2) (2000). 773 N.W.2d at 70-71. The Minnesota Supreme Court noted that *Lara* was a "federal criminal case that analyzes the application of the Double Jeopardy Clause to Indian and federal prosecutions." *Id.* *Lara* stated that the "*Duro* fix" change to inherent tribal criminal jurisdiction to prosecute all Indians was "a limited one" arising from already well-settled principles of Indian law. *Id.*, *citing* 541 U.S. at 204. *Lara* did not involve "interference with the power or authority of any State." *Id.*, *citing* 541 U.S. at 205. The Minnesota Supreme Court concluded that *Lara*'s broad inherent tribal authority language must be read within the confines of this Court's decisions that deal specifically with the question of state jurisdiction not present in *Lara*. *Id.* After reviewing several of this Court's decisions, including *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the Minnesota Supreme Court determined that *Lara* had not disturbed the decision the Minnesota Supreme Court had reached in *R.M.H.* 773 N.W.2d at 71.

6. The Minnesota Supreme Court also rejected Davis' argument that the state lacks jurisdiction if there is not an express grant of jurisdiction under Public Law 280. 773 N.W.2d at 72. Davis' two traffic offenses of speeding and no proof of insurance were treated as "civil/regulatory" under *State v. Stone*, 572 N.W.2d at 731, which applied *Cabazon*. 773 N.W.2d at

72, n. 4. Finding that *Cabazon* rejected an "inflexible per se rule," the Minnesota Supreme Court conducted the preemption analysis under *Cabazon* to determine if the State could exercise jurisdiction. 773 N.W.2d at 72-73, *citing Cabazon*, 480 U.S. 214-16. The court determined that the State has a strong interest in ensuring traffic safety on state highways. 773 N.W.2d at 72. Enforcing Minnesota's traffic laws against Davis in state court did not interfere with federal or tribal interests. *Id.* at 72-74. While recognizing the federal interest in preserving Indian self-governance and autonomy, the Minnesota Supreme Court concluded that interest was strongest when the tribe regulates its own members. *Id.* at 74. Because the tribal self-governance interest at issue here was the claim that Davis should be subject to trial in the Mille Lacs Band Tribal Court, under Mille Lacs Band laws, when Davis is a member of the Leech Lake Band who does not reside on Mille Lacs Band lands, the self-governance interest of the Mille Lacs Band is not the same as if Davis was a Mille Lacs Band member. *Id.* at 74, 68. Conversely, Davis' argument that the self-governance interest of the Minnesota Chippewa Tribe was subject to interference was unsupported. *Id.* at 73-74. The Minnesota Chippewa Tribe does not have traffic laws, a court system, or other self-governance interests that were infringed by prosecuting Davis in state court. *Id.* The Minnesota Supreme Court concluded that preemption analysis does not bar Minnesota from prosecuting Davis for traffic violations in these circumstances, and affirmed the decision of the Minnesota Court of Appeals. *Id.* at 74.

7. Davis predicated his argument before the Minnesota courts on the premise that his traffic violations occurred on the Mille Lacs Reservation. 773 N.W.2d at 68. The Minnesota Supreme Court assumed, without deciding, that "Davis committed his offense in Indian Country because, as set forth below, even if Davis was in Indian Country, the district court has jurisdiction." *Id.* at n. 2. Davis refers to the "Mille Lacs Reservation" as the reservation established by the 1855 Treaty with the Chippewa, 10 Stat. 1165. Pet. 8. *See,* 1855 Treaty at Pet. App. 69a. In *United States v. Mille Lacs Band of Chippewa Indians,* 229 U.S. 498 (1913), this Court held there had been an "express relinquishment of the lands in the Mille Lacs Reservation" under the terms of the Nelson Act of 1889, 25 Stat. 642. 229 U.S. at 504. The United States obtained the cession of the Mille Lacs Band Reservation in the 1864 Treaty with the Chippewa, 13 Stat. 693. 229 U.S. at 501. The Mille Lacs Band nevertheless claimed a "right of occupancy" under the 1864 Treaty pursuant to Article 12 owing to their "good conduct" [siding with the United States against the Dakota in the 1862 Conflict]. *Id.* at 501-02. The Nelson Act Agreement, however, provided that the Mille Lacs Band "forever relinquish[es] to the United States the right of occupancy on the Mille Lacs Reservation" reserved by Article 12 of the Treaty of 1864. 229 U.S. at 504-05. *United States v. Mille Lacs Band* held that the Mille Lacs Reservation was expressly ceded and relinquished. *Id.*

This Court's 1913 decision on the relinquishment of the Mille Lacs Reservation is reflected in the Constitution of the Minnesota Chippewa Tribe ("MCT"). While the MCT Constitution expressly

refers to the "Reservations" of five constituent Bands, only the "non-removal Mille Lacs Band of Chippewa Indians" is described without a reservation. Preamble to the revised Constitution and Bylaws of the Minnesota Chippewa Tribe. Pet. App. 39a. What is today colloquially referred to as the Mille Lacs Reservation consists of parcels of trust lands later acquired by the United States for the benefit of the Mille Lacs Band. The Mille Lacs Reservation created by the 1855 Treaty was sold and relinquished by the 1864 Treaty and the Nelson Act, as this Court held ninety-seven years ago in *United States v. Mille Lacs Band*. The issue of whether the Mille Lacs Reservation still exists was never reached by the Minnesota Supreme Court, which assumed that the conduct occurred in Indian Country because that assumption did not affect the outcome of its decision that the State had subject matter jurisdiction over Davis. 773 N.W.2d at 69, n.2.

ARGUMENT

A. Summary of the Argument

The Court should deny the Petition for Writ of Certiorari. The Petition does not implicate an issue of urgent importance, nor does the Petition demonstrate that a conflict exists between the state courts or federal circuits on the issues presented. The Petitioner seeks to vindicate the self-governance interests of the Minnesota Chippewa Tribe ("MCT"), which has no traffic laws and no judicial system. 773 N.W.2d at 73-74. The Petitioner alleges that jurisdiction over these traffic offenses is vested solely in the Mille Lacs Band's Tribal Court and should be prosecuted as

violations of the Mille Lacs Band's statutes. *Id.* at 68. But the Mille Lacs Band entered into a law enforcement agreement pursuant to state statute whereby the arresting tribal officer issued a state law citation to Davis for prosecution in state court by the Mille Lacs County Attorney. *Id.* at 67, n. 1.

Although the Petition makes no reference to any statutory authority for jurisdiction, Petitioner apparently seeks to invoke jurisdiction under 28 U.S.C. §1257. It is questionable whether this Court should exercise jurisdiction when the determination of this case in the Minnesota courts turned largely on the interpretation and application of state law, the Mille Lacs Band statutes, and the MCT Constitution.

Because of the manner in which the case was decided, the record below remains incomplete on the evidentiary issues concerning reservation status. ["The State argues that because the offense was committed outside of Indian Country, the state court has jurisdiction." 773 N.W.2d at 68, n. 2] The Minnesota Supreme Court assumed, without deciding, that the traffic stop occurred in Indian Country on land held in trust for the Mille Lacs Band – not the Minnesota Chippewa Tribe. *Id.* at 67. The driving conduct itself, as opposed to the stop, occurred on Highway 169. *Id.* While Petitioner claims that the driving conduct occurred within the boundaries of the reservation created by the 1855 Treaty with the Mille Lacs Band (Pet. 8), Petitioner fails to cite this Court's decision in the *United States v. Mille Lacs Band*, which found that there had been "an express relinquishment of the lands in the Mille Lacs Reservation." 229 U.S. at 504. If the offenses occurred outside of Indian Country, the State of Minnesota

unquestionably had jurisdiction over Davis' offenses. *See, Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973). Should this Court be inclined to grant the Petition, a remand for determination of the Reservation status issue should be required before all the issues presented by the Petition will be ripe for determination.

The Petition erroneously argues that the "*Duro* fix," 25 U.S.C. §1301(2) (2000), whereby Congress lifted the ban on inherent tribal jurisdiction over non-member Indians, as applied by this Court in *Lara*, bars state law enforcement activity. Pet. 13-19. To the contrary, *Lara* held that inherent tribal criminal jurisdiction would not operate to bar federal prosecution, despite an earlier tribal court conviction, under the Double Jeopardy Clause of the Constitution. 541 U.S. at 210. *Lara* expressly noted that no question of state law jurisdiction was presented, and *Lara* left unresolved "the question whether the Constitution's Due Process or Equal Protection Clauses prohibit tribes from prosecuting a non-member citizen of the United States." *Id.* at 205.

The Petitioner has cited no authority for the proposition that the "*Duro* fix" was designed to limit state jurisdiction, any more than the "*Duro* fix" limited federal authority to prosecute Billy Jo Lara for assaulting a federal officer. Nothing in the "*Duro* fix" references any Congressional intent to limit state jurisdiction under either P.L. 280 or the "preemption analysis" under *Cabazon*. *See* 25 U.S.C. §1301(2); *Cabazon*, 480 U.S. at 216. To read the language of the "*Duro* fix" as evidencing Congressional preemption of P.L. 280 would mean that all state criminal jurisdiction under P.L. 280 was voided because there is

no limit stated on "inherent power. . .to exercise criminal jurisdiction over all Indians." 25 U.S.C. §1301(2). Moreover, lifting the bar to inherent tribal **criminal** jurisdiction over all Indians is not an expression of statutory preemption of state **civil/regulatory** jurisdiction. Far from finding preemption, the Court in *Lara* reached the opposite conclusion, holding that the federal sovereign could also prosecute Billy Jo Lara. 541 U.S. at 210. Given the serious and fundamental Due Process and Equal Protection arguments against tribal criminal jurisdiction over non-member Indians that remain unresolved by *Lara*, it creates no basis to support a state jurisdiction preemption argument. *Id.* at 205.

State jurisdiction in the absence of an express grant of jurisdiction rests on the preemption analysis laid down by this Court in *Cabazon*, 480 U.S. at 214-16. *Cabazon* adopted the test from *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333-34 (1983), that state jurisdiction is preempted if it interferes with federal and tribal interests reflected in federal law, unless the state interests are sufficiently strong to justify state authority. *Cabazon*, 480 U.S. at 216.[2] Petitioner Davis claims that state jurisdiction interferes with the tribal interests of the Minnesota

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[2] *Cabazon* concerned on-reservation enforcement of state laws that were deemed civil/regulatory in nature. Here the Minnesota Supreme Court assumed, without deciding, that the conduct occurred in "Indian Country," and that the stop occurred on land held in trust for the Mille Lacs Band. As noted in Section E, *infra*, p. 26, either this Court's decision in *United States v. Mille Lacs Band of Chippewa Indians* determined ninety-seven years ago that the Mille Lacs Band Reservation had been disestablished, or an issue remains in this case that requires determination.

Chippewa Tribe, but the factual predicate for such an assertion is lacking.

Davis is an Indian enrolled at the Leech Lake Reservation. 773 N.W.2d at 68. Davis is also a citizen of the United States, and a citizen of the State of Minnesota. Davis is **not** a member of the Mille Lacs Band whose laws and court system he seeks to involve in his effort to vindicate the self-governance rights of the Minnesota Chippewa Tribe. Pet. 8-9, n. 18. But the Mille Lacs Band, by the law enforcement agreement reached under state statute, and acting through Tribal Officer Kimball, issued to Davis the state law citations for speeding and driving without insurance on Highway 169. 773 N.W.2d at 67, n. 1. The Petition never addresses how tribal self-governance issues are infringed when state jurisdiction was invoked by the Mille Lacs Band. *Id.* This case simply lacks a sufficient factual basis on which a grant of certiorari is appropriate to vindicate the alleged state law infringement on tribal self-governance rights of the Minnesota Chippewa Tribe, when the MCT has neither laws nor a judicial system that would apply to Davis' driving conduct. *Id.* at 73-74.

Alternatively, Davis argues that state civil regulatory authority has been preempted under the exceptions to P.L. 280.[3] Pet. 32-37. Davis simply ignores the logical inconsistency of arguing that while P.L. 280 does not apply because the traffic violations are civil/regulatory, the exceptions to P.L. 280's grant of jurisdiction do apply. Further, Davis relies upon both the civil and criminal jurisdiction "exceptions" to

[3] This issue was not addressed by the Minnesota Supreme Court's decision.

P.L. 280. *Id.* While citing the usufructuary exception in 18 U.S.C. §1162(b) to state jurisdiction over offenses committed by or against Indians (Pet. 6), Davis argues, as he must to avoid express P.L. 280 jurisdiction, that the driving offenses are civil/regulatory and therefore not criminal. Compounding this error, Davis' argument under §1162(b) creates an exception that would swallow the rule. Under the Petitioner's analysis, the protection of "hunting, trapping or fishing" treaty rights from state prosecution extends to all economic activity, including Davis' commute by vehicle to work in a casino. Pet. 9-11. This expansionist interpretation was rejected by *United States v. Gotchnik*, 222 F.3d 506, 510 (8th Cir. 2000), which found that usufructuary rights extend to modern hunting and fishing equipment, but not to "modern modes of transportation to reach desired hunting and fishing areas." *Id.*

The second Public Law 280 provision relied upon by Petitioner arises under 28 U.S.C. §1360, which governs state civil jurisdiction. Pet. 36. That "exception" requires that any "tribal custom or ordinance. . . not inconsistent with the civil law of the state, be given full force in the determination of civil causes of action. . ." 28 U.S.C. §1360(c). This "exception" is unavailing for three fundamental reasons. First, once again, if P.L. 280 applies to these traffic offenses, the State has an express grant of jurisdiction under 18 U.S.C. §1162(a). Second, Davis argues that the Minnesota Chippewa Tribe, not the Mille Lacs Band, has jurisdiction and self-governance rights that preempt the exercise of state jurisdiction. Pet. 8; *see also* Petitioner's Issues. Because the Minnesota Chippewa Tribe has neither traffic laws nor

a judicial system, the MCT has no inconsistent laws or customs that would impact state law application. 773 N.W.2d at 73-74. Third, the Mille Lacs Band law that Davis does seek to invoke includes the law enforcement agreement between the Band and County Sheriff under state law. *Id.* at 67, n. 1. Mille Lacs Band Officer Kimball was acting under that agreement when he issued Davis the citation for traffic offenses to be prosecuted in state court. *Id.* Not only is the prosecution of Davis in state court "consistent" with Mille Lacs Band law, but state jurisdiction was invoked by the Mille Lacs Band officer. *See* 28 U.S.C. §1360(c); 773 N.W.2d 67, n. 1. Public Law 280 does not preempt state jurisdiction under these facts.

B. The State's Exercise of Jurisdiction Over the Traffic Offenses Committed by Davis Was Valid under *Cabazon's* Preemption Analysis.

The Minnesota Supreme Court treated the driving offenses of speeding and driving without proof of insurance as "civil/regulatory" offenses.[4] *Davis*, 773 N.W.2d at 72, n.4. The "civil/regulatory" classification of the traffic offenses follows the decision in *State v. Stone*, which considered and applied the principles set forth in *Cabazon*. *See State v. Stone*, 572 N.W.2d at 729-731. Because it classified Davis' driving offenses as "civil/regulatory," the Minnesota Supreme Court decided that P.L. 280 did not provide an express grant of state jurisdiction. 773 N.W.2d at 69, 72, n. 4.

[4] *See* Argument at Section D, p. 22, *infra* on whether the traffic offenses were properly classified as civil/regulatory.

Instead the court applied the preemption analysis under *Cabazon*. *Id.*, 773 N.W.2d at 72.

The Minnesota Supreme Court rejected the argument that the absence of an express grant of jurisdiction under P.L. 280 bars any enforcement activity as an "inflexible per se rule." *Id.*, *citing Cabazon*, 480 U.S. at 214-16. Instead, the court conducted a preemption analysis to determine whether state law would apply: "state jurisdiction is pre-empted. . .if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *Davis*, 773 N.W.2d at 72, quoting *Cabazon*, 480 U.S. at 216 and *New Mexico v. Mescalero Apache Tribe*, 462 U.S. at 333-34. The Minnesota court determined that it needed to "weigh the competing interests at stake" within the "specific factual context" presented. *Davis*, 773 N.W.2d at 72, *citing R.M.H.*, 716 N.W.2d at 64.

The State has a strong interest in ensuring traffic safety on state highways, and prosecuting Davis in state court for conduct in violation of state traffic laws furthers this strong interest. *Davis*, 773 N.W.2d at 72. The court also found that Minnesota's traffic laws are not inconsistent with federal pronouncements on this topic, noting that the federal government has not imposed a detailed scheme of traffic regulation on tribal reservations and has demonstrated little interest in the enforcement of traffic laws on state-operated and maintained highways. *Id.* at 73, *citing R.M.H.*, 617 N.W.2d at 65. The court noted a marked contrast with the circumstances in *Cabazon* where the federal policy of promoting tribal self-sufficiency through bingo parlors was precisely what California

sought to prevent. 773 N.W.2d at 73, *citing Cabazon*, 480 U.S. at 218, 220.

The only well-recognized federal interest potentially implicated was preserving Indian self-governance and autonomy. *Davis* at 73, Pet. App. 16a, *citing Cabazon*, 480 U.S. at 216 and *New Mexico v. Mescalero Apache Tribe*, 462 U.S. at 334-35. Davis argued that the Minnesota Chippewa Tribe's self-governance interest was implicated in this case. 773 N.W.2d at 73. The Minnesota Supreme Court held that state prosecution did not interfere with the self-governance rights of the Minnesota Chippewa Tribe. *Id.*

Although acknowledging that the Mille Lacs Band was a constituent member of the Minnesota Chippewa Tribe, the court noted that the Mille Lacs Band statutes made clear that the political rights of the Band derive from the "inherent and aboriginal rights of the people of *the Band* to self-government." *Id.* The Band did not delegate to the MCT, but reserved to itself the power to maintain Band government. *Id.* at 73-74. The Mille Lacs Band, pursuant to its own statutes, possesses a government that includes a judicial branch, whereas the MCT does not have a judicial branch or its own court. *Id.* While Davis' conduct violated traffic laws of the Mille Lacs Band, the conduct does not violate laws of the Minnesota Chippewa Tribe. *Id.* Because Davis is not a member of the Mille Lacs Band, the operation of state law to

Davis' conduct in Indian Country[5] does not infringe on the Band's self-governance interest. *Id.* at 74. Though Davis claimed that the interest of self-governance was implicated because of the structure of the MCT, the Minnesota Supreme Court found that any self-governance interest rests, not with the MCT, as Davis argues, but with the Mille Lacs Band. *Id.*

The self-governance interest of the Mille Lacs Band was not implicated by state prosecution. *Id.* The Mille Lacs Band officer issued the state citation to Davis for prosecution in state court by the County Attorney, pursuant to the law enforcement agreement between the Band and the County Sheriff. *Id.* at 67, n.1. This law enforcement agreement is properly treated as one of the "exceptional circumstances [where] a State may assert jurisdiction" under *Cabazon*, 480 U.S. at 215, *citing New Mexico v. Mescalero Apache Tribe*, 462 U.S. at 331-32. *See Duro v. Reina*, 495 U.S. 676 (1990). "States may, with the consent of the tribes, assist. . .by punishing minor crimes." *Id.* at 697.

The Minnesota Supreme Court further rejected the argument that state jurisdiction under *Cabazon*'s preemption analysis had been effectively overruled by *Lara*'s application of the "*Duro* fix." 773 N.W.2d at 71. In *Duro v. Reina*, the Court held that tribes lack criminal jurisdiction over non-member Indians. 495 U.S. at 688. Congress subsequently over-ruled *Duro* by statute, recognizing "the inherent power of Indian

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[5] The court assumed that Davis' conduct occurred in Indian Country, but declined to address the State's argument that Highway 169 was outside of Indian Country, and the state court therefore had jurisdiction. *Davis*, 773 N.W.2d at 68, n.2. *See* Argument at Section E, page 26, *infra*.

tribes. . .to exercise criminal jurisdiction over all Indians." 25 U.S.C. §1301(2) (2000). This statutory amendment is known as the "*Duro* fix." *Id.*

The Petitioner argues that the treatment of the "*Duro* fix" by *Lara* effectively over-ruled the Minnesota Supreme Court's decision in *State v. R.M.H.*, which predated *Lara* and the "*Duro* fix." *R.M.H.* held that the State of Minnesota could exercise jurisdiction over civil/regulatory traffic offenses committed by an Indian on a reservation where that person was not a member. 617 N.W.2d at 64-65. Davis argues that the principles enunciated by *R.M.H.* are inconsistent with *Lara*'s view of inherent tribal authority in light of the "*Duro* fix." Pet. 3.

The Minnesota Supreme Court began by noting that *Lara* described its holding that Congress could restore the tribes' inherent authority to prosecute all Indians as a "limited one" arising from well-settled principles of Indian law. *Davis*, 773 N.W.2d at 71, *citing Lara*, 541 U.S. at 204. *Lara* specifically stated that its decision did not involve "interference with the power or authority of any state." 773 N.W.2d at 71, *citing Lara*, 541 U.S. at 205. Finally, the Court in *Lara* made clear that it did not reach "the question whether the Constitution's Due Process or Equal Protection Clauses prohibit tribes from prosecuting a non-member citizen of the United States." *Lara* at 205.

The concurring opinion of Justice Kennedy expressed concern that pronouncements in the Court's opinion went beyond the limited holding that the tribal prosecution of Billy Jo Lara was not a delegated federal prosecution, and therefore his Double Jeopardy argument must fail, to reach issues under the

Constitution that are "most doubtful." *Lara* at 211. (Kennedy, J. concurring). Justice Kennedy was clearly troubled by the concept that a citizen of the United States could be subjected to sovereignty outside the basic structure of the Constitution which is based on the original and continuing consent of the governed. *Id.* at 212. The Constitution provides every citizen the protection of two governments, the nation and the state, with each sovereign required to respect the proper sphere of the other. *Id.* at 212. While there is an historical exception for Indian tribes, that exception has been justified by the claim that a member of the tribe consents to be subjected to the jurisdiction of his own tribe. *Id.* at 212. The Court's Opinion reserves the Due Process and Equal Protection Clause issues for future determination, but Justice Kennedy remained concerned that the majority ignored the principle that the constitutional structure was in place before the Fifth and Fourteenth Amendments were adopted. *Id.* at 213. "The political freedom guaranteed to citizens by the federal structure is a liberty both distinct from and every bit as important as those freedoms guaranteed by the Bill of Rights." *Id.* at 214.

Lara describes its holding as "limited" and not reaching state jurisdictional issues, while leaving open future challenges to tribal criminal jurisdiction over non-member Indians under the Equal Protection and Due Process Clauses. *Lara* at 204-05. Consequently, the Minnesota Supreme Court properly found that *Lara* had not disturbed its preemption analysis in *R.M.H. Davis,* 776 N.W.2d at 71.

C. The Exceptions to Public Law 280 are Inapplicable to the State's Jurisdiction Over Davis.

Davis argues that two "exceptions" to P.L. 280 jurisdiction operate to divest the State of Minnesota of jurisdiction.[6] Pet. 32-36. Davis finds himself in the difficult position of arguing that while P.L. 280 does not provide an express grant of state jurisdiction for these traffic offenses because they are "civil/regulatory," the "exceptions" to P.L. 280 still apply.[7] Davis argues that the first exception, protecting the exercise of usufructuary rights, is found in both the civil and criminal provisions of P.L. 280. To the contrary, the exception to hunt, fish, or trap is found only in the criminal jurisdiction provision of 18 U.S.C. §1162(b). Davis argues that his automobile is his "new canoe" that he is using to exercise his modern rights to hunt, fish or gather [the term "gather' is not in §1162(b)], which is the modern equivalent of the exercise of his usufructuary rights. Pet. 9-11, 43. Davis is seeking an exception to the criminal law enforcement of P.L. 280 that would swallow the rule, because anyone traveling to or engaged in any economic activity would be exercising their treaty-based usufructuary rights. This view has been rejected by the Eighth Circuit's decision in *United*

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[6] The P.L. 280 "exceptions" issue was not addressed by the Minnesota Supreme Court's decision.

[7] The creation of "civil/regulatory" and "criminal/prohibitive" classifications are contrary to the express language of §1162 of P.L. 280 that refers to jurisdiction over "offenses" committed by or against Indians, and applies state criminal law uniformly in Indian Country. 18 U.S.C. §1162(a). *See* Section D, p. 22, *infra*.

States v. Gotchnik, 222 F.3d 506 (8th Cir. 2000) where the court determined that while modern hunting and fishing equipment can be utilized in the exercise of usufructuary rights, "modern modes of transportation to reach desired hunting and fishing areas," are not within the purview of those rights. *Id.* at 510. Davis does not even claim he was on his way to hunt, fish or trap, but instead seeks to expand his usufructuary rights to include his commute to his job as a security guard at the casino. Pet. 9-11. This is far beyond the express language of the exception to P.L. 280 criminal jurisdiction in 18 U.S.C. §1162(b).

The second P.L. 280 "exception" cited by Davis requires that any "tribal custom or ordinance. . .not inconsistent with the civil laws of the state, be given full force and effect in the determination of civil causes of action." 28 U.S.C. §1360(c), Pet. 36. Far from preempting state civil jurisdiction, the provision instead requires that in the exercise of state jurisdiction, any tribal ordinance or custom, not inconsistent with state law, be considered and applied. The Mille Lacs Band officer followed the Band's law enforcement agreement with the County Sheriff, and issued Davis a state law citation for prosecution of the traffic offenses in state court. *Davis*, 773 N.W.2d at 67. The Mille Lacs Band "ordinance or custom" is fully consistent with the state's exercise of jurisdiction over Davis. The P.L. 280 "exceptions" relied upon by Davis are either inapplicable or support the state's jurisdictional claim.

D. Public Law 280 Provides an Express Grant of Jurisdiction to the State of Minnesota for Traffic Offenses.

Although the Minnesota Supreme Court treated the traffic offenses of speeding and driving without insurance as "civil/regulatory" under its prior decision in *State v. Stone*, 572 N.W.2d at 731, that classification remains doubtful under the *Cabazon* analysis. *Cabazon* classified the California laws that prohibited the Cabazon Band from operating its bingo parlor as "civil/regulatory" because of two unique circumstances, neither of which are present here.[8] First, the Court observed that California permitted "a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery." *Id.*, 480 U.S. at 211. The Court concluded that California's policy therefore regulated, rather than prohibited, gambling in general and bingo in particular. *Id.* Second, the Court noted the policy of the federal government in encouraging tribal economic self-sufficiency, and found that gambling was the sole source of revenue for the operation of tribal government and the provision of tribal services. *Id.* at 218-19. Self-determination and economic development were dependent upon these factors. *Id. Cabazon* concluded that "the current federal policy is to promote precisely what California seeks to prevent." *Id.* at 220.

Conversely, the Court in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447

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[8] The unique tribal gaming issue in *Cabazon* was subsequently addressed by Congress through the Indian Gaming Regulatory Act, 102 Stat. 2467, 25 U.S.C. §2701 et seq. (1988)

U.S. 134, 155-159 (1980) permitted the state to tax cigarettes sold at tribal smoke shops to non-Indians, despite the negative impact this would have on tribal revenues. *Cabazon* at 219.

Justice Stevens' dissent in *Cabazon* pointed out that the majority's reasoning could be stretched to a meaningless level by "arguing that driving over sixty miles an hour is consistent with public policy because the state allows driving at speeds up to fifty-five miles per hour." 480 U.S. at 225 (Stevens, J. dissenting). The majority in *Cabazon* rejected that construction by noting that "[t]he shorthand test is whether the conduct at issue violates the State's public policy." *Id.* at 209. Minnesota's public policy prohibits speeding and driving without insurance on all public roadways.

The Minnesota Supreme Court in *State v. Stone* struggled with the issue of how to classify traffic offenses as criminal/ prohibitive or civil/regulatory. Reasoning that because Minnesota permits driving generally, offenses such as speeding and uninsured driving were civil/regulatory, the court nevertheless found that other traffic laws involving drinking and driving, or reckless and careless driving, were classified as criminal/ prohibitory. *State v. Stone*, 572 N.W.2d at 730-31. The express language of P.L. 280, with its two-part grant of jurisdiction, does not support this classification:

> "**§1162. State Jurisdiction Over Offenses Committed by or against Indians in the Indian Country.**
>
> (a) Each of the States or Territories listed in the following table [1] **shall have jurisdiction over**

> **offenses committed by or against Indians in the areas of Indian Country** listed opposite the name of the State or Territory **to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory,** and [2] **the criminal laws of such State or Territory shall have the same force and effect within such Indian Country as they have elsewhere within the State** or Territory." *Id.* [emphasis added]

Congress expressly provided in 18 U.S.C. §1162(a) that the six identified states, including Minnesota, would have jurisdiction over "offenses committed by or against Indians. . .to the same extent that such state. . . has jurisdiction over offenses committed elsewhere within the State." Additionally, and separately stated, the "criminal laws of such State or Territory shall have the same force and effect within such Indian Country as they have elsewhere within the State." *Id.*

There is nothing in this express statutory grant of jurisdiction over both offenses committed by Indians, and also extending state criminal laws to Indian Country to the same extent as elsewhere in the State, that supports the civil/regulatory classification of driving offenses by individual Indians. *Cabazon* is best understood as a case where state law operated as a direct interference with the on-reservation economic activities of tribal government.

Public Law 280 expressly provides that the state has complete jurisdiction over offenses committed by or against Indians, and the reach of the state's criminal law in Indian Country is the same as it is

everywhere else in the State. There is no exception contained in 18 U.S.C. §1162(b) or (c) that prohibits the enforcement of state traffic laws, even if the driving occurred within Indian Country. The absence of a traffic law exception in P.L. 280, while other exceptions are expressly included in 18 U.S.C. §1162, counsels against judicial creation of a traffic law exception. The enforcement of state traffic laws does not impact tribal self-determination or economic development. There is no federal or tribal interest that is promoted by permitting the violation of traffic laws. The health, safety, and welfare of Indian citizens is enhanced by the enforcement of state traffic laws in a uniform manner throughout the State of Minnesota, including Indian Country. There is nothing within the language of 18 U.S.C. §1162 that could be read to limit uniform state traffic law enforcement on state maintained highways for travel throughout Indian Country.

Driving without insurance is prohibited on all public roads in Minnesota, and exceeding the speed limit is similarly prohibited throughout Minnesota. Indeed, the ordinances of the Mille Lacs Band also prohibit driving without insurance and prohibit speeding. *Davis*, 773 N.W.2d at 74. There is no basis to classify state traffic laws as anything but criminal/prohibitive when federal law is disinterested or minimal on traffic matters, and where the State of Minnesota uniformly prohibits driving offenses on all roadways in the State. *Id.* at 72-73. Policy considerations favor uniform state traffic law jurisdiction throughout Minnesota, not a patchwork of enforcement for Indians versus other citizens. This is especially true where federal, state or county roadways

take travelers through Indian trust land parcels or reservations where the traveler intends no interaction with the tribe or its lands. To single out one class of citizens, non-member Indians, and subject them to the laws of a tribal government, when other citizens are not, raises serious Equal Protection issues. The uniform application of state traffic laws and jurisdiction under P.L. 280 avoids this outcome.

E. The Case Should be Remanded to Determine Whether the Mille Lacs Reservation Exists Before the Court Reaches the Issues Presented on the Petition for Certiorari.

The lower courts have not addressed whether the Mille Lacs Reservation of 1855 was disestablished, or whether the driving conduct occurred in Indian Country. The Petition for Writ of Certiorari should not be granted, absent a remand for determination of these issues.

The Minnesota Supreme Court assumed, without deciding, that Davis committed his offense in Indian Country because it determined that the State had jurisdiction even if Davis was in Indian Country. *Davis*, 773 N.W.2d at 68, n. 2. Petitioner argues that Davis was in Indian Country because he was within the boundaries of the Mille Lacs Reservation established by the 1855 Treaty. *See* 1855 Treaty with the Chippewa, 10 Stat. 1165, Pet. App. 69a. Petitioner's argument is fundamentally in error because this Court has already determined that there was "an express relinquishment of the lands in the Mille Lacs Reservation." *United States v. Mille Lacs Band*, 229 U.S. at 504.

This issue is important for two reasons. First, if Davis' driving conduct occurred outside of Indian Country, the state court unquestionably has jurisdiction. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973). [stating if an offense is committed outside of Indian Country, the state has authority to enforce its laws against Indians.] Because the Reservation boundary issue was not addressed in the lower courts, this case is not the appropriate vehicle to address whether the state court lacks jurisdiction under *Cabazon*'s preemption analysis, in light of the "*Duro* fix" and *Lara*. The Court should decline review until a case is presented in which the issue of whether the offense occurred in Indian Country has been fully developed.

Second, Petitioner argues that it is the self-governance rights of the Minnesota Chippewa Tribe that are being impacted by the failure to find that the Mille Lacs Tribal Court has exclusive jurisdiction over driving conduct by Davis on the Mille Lacs Reservation. 773 N.W.2d at 68, 73. Obviously one of the necessary components of that argument is in serious doubt in light of this Court's holding that the Reservation was relinquished. *United States v. Mille Lacs Band*, 229 U.S. at 504. Petitioner also argues that the structure of the governance rights of the Minnesota Chippewa Tribe, in which the Mille Lacs Band is one of its constituent members, is sufficient to implicate the self-governance rights of the Minnesota Chippewa Tribe itself. 773 N.W.2d at 73-74. Once again, the existence of the Mille Lacs Reservation is essential for this claim to be advanced.

The Minnesota Chippewa Tribe, under its Constitution, is composed of five Bands with

reservations and one Band without a reservation, the "non-removal Mille Lacs Band of Chippewa Indians." *See* Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota, Preamble, Pet. App. 39a. Because of this Court's decision in 1913 in *United States v. Mille Lacs Band*, when the Constitution of the Minnesota Chippewa Tribe was written under the authority of the 1934 Indian Reorganization Act, 48 Stat. 984, the MCT Constitution recognized that the Mille Lacs Reservation no longer existed. Pet. App. 39a. What is colloquially referred to as the Mille Lacs Reservation today is a collection of trust lands acquired for the benefit of the Mille Lacs Band.[9] *See* 773 N.W.2d at 67. ["Davis argues, and we assume for purposes of this Appeal, that the area where he stopped his vehicle is land held in trust by the United States for the Mille Lacs Band of Chippewa Indians."] *Id.*

But if the Mille Lacs Reservation of 1855 no longer exists, as this Court held ninety-seven years ago, then the factual predicate of the Petitioner's argument that the Minnesota Chippewa Tribe has self-governance interests in Mr. Davis' driving activities on the Mille Lacs Reservation is missing a critical component. Tribes have some "attributes of sovereignty over their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975). When the "*Duro* fix" lifted the ban on inherent tribal jurisdiction over

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[9] *County of Mille Lacs v. Benjamin*, 262 F.Supp.2d 990 (D. Minn. 2003), *aff'd in part and rev'd in part on other grounds*, 361 F.3d 460 (8th Cir. 2004), *cert. den.* 543 U.S. 956 (2004) found that subsequent to the Nelson Act, "the United States purchased land for the Mille Lacs Band. . .[t]he 4,000 acres purchased at that time are held in trust." *Id.*, 262 F.Supp.2d at 993.

all Indians, that could necessarily only apply to non-member Indians within the Tribe's "territory." The MCT Constitution itself, as well as United States Supreme Court precedent, place the claim that there is a "Mille Lacs Reservation" within the jurisdiction of the Minnesota Chippewa Tribe in serious doubt.

Mille Lacs County brought suit in an effort to determine the Mille Lacs Reservation boundary status in *County of Mille Lacs v. Benjamin*. The district court declined jurisdiction based on its finding that the plaintiffs lacked standing to bring the claims and that the claims were not ripe for adjudication. *Id.* 262 F.Supp.2d at 1001. In reaching that holding, the court stated:

> "The Mille Lacs Band has neither threatened nor demonstrated an intention to enforce its ordinances beyond its 4000 acres."

Id. at 996. The court also reviewed "the text of the Mille Lacs Band ordinances" and found that they were "insufficient to indicate an intent to enforce all of the Mille Lacs Band ordinances on the land within the 1855 boundaries." *Id.* at 996-97. "**The Mille Lacs Band and its members have consistently complied** – however grudgingly – **with** the County's zoning regulations and **state traffic laws.**" *Id.* at 997. [emphasis added] Given that the Mille Lacs Band has not asserted the reach of its ordinances beyond the four thousand acres of trust land, and has told the federal district court that its members comply with state traffic laws, in order to avoid adjudication of the reservation boundary issues in *County of Mille Lacs v. Benjamin*, the Minnesota Chippewa Tribe must be

bound by the decisions of its constituent member Band on the reach of its ordinances. The alternative, if the Court determines that the self-governance rights of the Minnesota Chippewa Tribe are implicated by the issuance of a state traffic citation to Davis, is that the Reservation boundary issue is now ripe for adjudication.

Accordingly, before this Court can resolve the issues presented by the Petition for Writ of Certiorari, this case would need to be remanded for determination of the reservation status issue, and whether the driving conduct on a state administered highway occurred within Indian Country. While the State of Minnesota believes that the Petition for Certiorari should be denied, if the Court is inclined to grant review, a remand to determine whether the 1855 Reservation still exists and whether the offense occurred within Indian Country is necessary before the issues will be fully ripe for this Court's determination.

The historical facts supporting the complete sale, cession and relinquishment of the Mille Lacs Reservation, including any claim of right of occupancy, are compelling. Just eight years after the creation of the Mille Lacs Reservation in 1855, the United States negotiated a treaty in 1863, 12 Stat. 1249, for the cession of those reservation lands. This action was part of the larger effort of the United States to cede various Chippewa Reservations in Minnesota and relocate the Chippewa Indians onto a single Reservation. *United States v. Mille Lacs Band*, 229 U.S. at 500-01. The 1864 Treaty with the Chippewa, 13 Stat. 693, "superseded [the Treaty] of 1863, and insofar as their provisions are material here they were

identical. . ." *United States v. Mille Lacs Band* at 501. The Treaty of 1864 contained a proviso in Article 12 declaring that due to their good conduct, the Mille Lacs Band of Indians would not be compelled to remove from the old reservation to the new one, as long as they do not interfere with the whites. *Id.* at 501-02, *citing* Article 12 of the Treaty of 1864. The Mille Lacs Band maintained that Article 12 operated to reserve lands for their occupancy and use indefinitely, which lands would not be open to settlement. *Id.*

In 1889, Congress passed the Nelson Act, 25 Stat. 642. The Nelson Act of 1889 authorized and obtained an agreement with the various Chippewa Bands in Minnesota, including the Mille Lacs Band, to cede their interest in several reservations in Minnesota and remove to the White Earth Reservation. *United States v. Mille Lacs Band,* 503-05. Among the provisions of the Nelson Act was the following:

> "[W]e do also hereby forever relinquish to the United States the right of occupancy on the Mille Lacs Reservation, reserved to us by the twelfth article of the treaty of May 7, 1864."

Id. at 505, quoting the Nelson Act Agreement approved and accepted by the President on March 4, 1890. *Id.* at 504.

On this record, the Court found that there had been an express relinquishment and cession of the Mille Lacs Reservation, including the right of occupancy. *United States v. Mille Lacs Band* at 504-05.

> "[T]he Indians, no less than the United States, are bound by the plain import of the language of the act and the agreement."

Id. at 508. Upon these facts, the Court concluded that there was "an express relinquishment of the lands of the Mille Lacs Reservation." *Id.* at 504.

The United States Supreme Court noted that the original Mille Lacs Reservation was comprised of "a little more than 61,000 acres." *Id.* at 499. The lands of the original Mille Lacs Reservation were disposed of in their entirety. 29,335.50 acres were disposed of prior to the Nelson Act, 31,692.34 acres were disposed of under the Nelson Act, and payments were made by the United States government on the claims. *See, Minnesota Chippewa Tribe v. United States,* 11 Cl.Ct. 221, 230 (1986). *See also, United States v. Minnesota,* 270 U.S. 181, 198 (1926) [finding that the Nelson Act ceded reservation land]; *compare South Dakota v. Yankton Sioux Tribe,* 522 U.S. 329 (1998), *citing Decoteau v. District County Court for Tenth Judicial District,* 420 U.S. 425 (1975) [lands ceded or relinquished under an Act similar to the Nelson Act were not in the reservation], *Id.*, 522 U.S. at 791-92. After this Court's decision in *United States v. Mille Lacs Band* in 1913 found that the Reservation had been expressly ceded and relinquished, the United States purchased approximately four thousand acres of trust land parcels. *Mille Lacs County v. Benjamin*, 262 F.Supp.2d at 993.

Because the resolution of the Mille Lacs Reservation boundary issue is potentially dispositive of the issues raised on appeal, before the case is granted review under Davis' Petition for Writ of

Certiorari, this case should be remanded to the Minnesota courts for a determination of these issues. Because the Minnesota Supreme Court correctly determined that the state had subject matter jurisdiction over Davis' traffic offenses, the Petition for Writ of Certiorari is properly denied.

CONCLUSION

For the reasons stated, the Respondent State of Minnesota respectfully requests that the Petition for Writ of Certiorari be denied. In the alternative, should the Court determine that the issues merit further review, the case should be remanded to the Minnesota courts for an evidentiary hearing on the status of the Mille Lacs Reservation and whether the driving conduct in question occurred in Indian Country.

Respectfully submitted,

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